Vancouver, B.C.,

November 17th, 1948, 10:0 A.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Mr. McPherson, you have the amendment to Item 2 in the claim?

MR. McPHERSON: Yes, my lord.

MR. BREWIN: My lord, might I speak to that amendment before we go on?

THE COMMISSIONER: Yes.

MR. BREWIN: As your lordship knows, this was something in the nature of an estimate, and it still appears, unfortunately, that there is some misunderstanding in regard to the footage of timber distributed amongst these different blocks. While we are not going to amend this further now, your lordship will understand it is something of an estimate and after putting this in we discussed this with Mr. Kagetsu again, and it seems there are one or two things wrong in this letter.

The third item is Block 617.

THE COMMISSIONER: Yes.

MR. BREWIN: And that should be 12 million feet instead of 10 million.

THE COMMISSIONER: Yes.

MR. BREWIN: Then the next item was Block 274, which should be 2 million instead of 2,500,000. Then coming over again on the next page, Block 256 there should be a blank, and the same with Block 189. So, it still comes to the same amount of 27 million, but it is differently distributed.

THE COMMISSIONER: I see.

MR. BREWIN: Your lordship will appreciate that we have distributed those as best we can on the information we have at the moment.

THE COMMISSIONER: Any objection, Mr. McPherson?

MR. McPHERSON: No, my lord.

THE COMMISSIONER: Very well, then. The claim will be amended by substituting Item 2 as set out in Mr. Norris's letter of November 15th for Item 2 as shown in the amended claim, dated November 3rd, 1948. Who is your next witness?

MR. BREWIN: Mr. Kagetsu is still under cross-examination.

MR. McPHERSON: We are still cross-examining Mr. Kagetsu, my lord. Now, my lord, in saying I had no objection to the amendments, I was referring, of course, to the 12 million and the 2 million which Mr. Brewin has just referred to.

Of course, I still reserve my right to break down this claim to find out what Mr. Kagetsu is claiming as the value of his buildings, etc, which isn't set out here, except at $4.00 a thousand.

THE COMMISSIONER: After all, this is only a statement.

MR. McPHERSON: Yes, my lord. I wonder, my lord, if the proceedings could be shortened a bit by Mr. Kagetsu not requiring an interpreter when questions are asked, unless he indicates he does not understand the question; because my information is that Mr. Kagetsu can understand English, but he

may not be able to express himself so well in English. We can cut down the time, if he can listen to the question in English and then reply to the interpreter, unless he feels he doesn't understand.

THE COMMISSIONER: Will you explain Mr. McPherson's request to Kagetsu, Mr. Brewin? It has been my observation that he does understand most questions that are put, but he perhaps has some difficulty in replying to them.

MR. BREWIN: I had better put it to the interpreter. Mr. McPherson proposes to ask the questions in English and have Mr. Kagetsu reply through you in Japanese, if he understands the question. If he does not understand the question, then he can have it interpreted to him. Yes, that is satisfactory, my lord.

THE COMMISSIONER: Very good.

EIKICHI KAGETSU, resumed the stand, testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Kagetsu, I show you a copy of Exhibit 13, that is a plan of the Deep Bay Logging operations. Could you tell his lordship whether or not this is a plan which was made by you, or someone in your office, for the use of the Deep Bay Logging Company?

A I don't know this plan at all. I don't know this plan at all. I haven't instructed anybody to

make this plan.

Q And you have never seen this plan before you came to Court here?

A I saw the plan at Mr. Norris's office. That was the first time I saw it.

Q Mr. Kagetsu, with respect to Block 504, am I correct that you bought that block of timber from the E. & N. Railway in 1939, on an estimated cruise of 9,365,000 feet, and 1435 cedar poles for a sum of $14,000.00?

THE COMMISSIONER: What was the cruise again?

MR. McPHERSON: 9,363,000 feet, my lord, and 1435 poles.

THE COMMISSIONER: And the price, $14,000.00.

MR. McPHERSON: $14,000.00, my lord, is what I am suggesting.

A Will you please repeat it?

THE COMMISSIONER: Q: In round figures, 9,000,000 feet. A: I don't buy timber by so much a foot, but I buy it by the acre and I bought it for $19,000.00.

Q You are a most unusual timber operator, Mr. Kagetsu, if that is the case.

A Generally I buy it from the E. & N. Railway by the acre, although their caluclation is by feet.

Q Do you know what cruise the E. & N. Railway Company had of Block 504, at the time you bought it? A: I know it by feet only. Then the record, which was kept on the file, was taken away by the Custodian, so

I can't definitely tell the feet.

MR. McPHERSON: Q: Now, Mr. Kagetsu, if you bought the E. & N. timber on the basis of acreage, why did you tell his lordship the other day that the E. & N. cruises were always 100% below your own cruise? Wouldn't you have to know the E. & N. cruise in order to be able to make that statement?

A I generally go by feet. I know it by feet, but the only thing is I couldn't tell you exactly, unless I have some documents that I went by before.

THE COMMISSIONER: Q: Now, Mr. Kagetsu, were you proposing to buy timber, or were you buying land?

A I buy timber, including the land.

Q I took it from the answer that you first gave that you were concerned in buying acreage, and were not concerned in the amount of timber on it, is that correct?

A That is not quite right, he says. He says I know the E. & N. Railway Company by feet, so I know exactly what they have, but when I buy I generally buy by acreage, knowing how many feet it had.

MR. McPHERSON: Q: When you bought 504, how many feet of timber were on it?

A I couldn't make any statement, because I haven't got it down in my notebook.

MR. BALDWIN: My lord, if it is of any assistance, we are prepared to admit the E. & N. cruise, which was made, and Mr. Kagetsu just hasn't got

the figures. The figures as my learned friend has given them, are correct.

THE COMMISSIONER: The impression that Mr. Kagetsu is creating with me is that he is seeking to convey the idea he was buying land, and not timber. I have tried to get an explanation from him, but I have not had it yet.

MR. McPHERSON: Q: Mr. Kagetsu, I am interested in that black book you produce every now and then. The other day when I was cross-examining you on Block 617 and Block 276, you produced that black book and you told me for 617 you estimated in 1942 there was 11 to 12 million feet, and that you were claiming $5.00 a thousand at the time you made your first claim, and you are now claiming $4.00 a thousand. Now, that is my recollection of what happened the other day. Now, you produce the black book again today. Are you suggesting in that black book you have only certain selected blocks on which you have information? A: I told you last time that there was 12 million feet of timber in Block 617, and that was in 1942, and I made the estimate in Toronto and I didn't know really the value of the Vancouver market. However, when I came here, I found it was about $4.00, so I have claimed on that basis.

Q Do you agree, then, Mr. Kagetsu, that there was 12 million feet of timber on Block 617?

A I am quite certain of that, as I have seen it

myself.

Q And you got that information from your black book, is that correct?

A I haven't got that in the black book. I know it, as I have seen it myself.

Q And how much timber did you think there was on 504 when you left it in 1942?

A Could I refer to Mr. Baldwin?

Q No. I would object to that, my lord. The witness should know his own claim.

THE COMMISSIONER: Let the witness answer that himself.

A I am sorry, unless I could have the reference, I couldn't tell you.

THE COMMISSIONER: You might endeavour to ascertain if he knows what amount of timber he cut from 504, Mr. McPherson.

MR. McPHERSON: Yes, my lord.

Q How much timber do you estimate you had cut from 504? A: It is 1942, isn't it, that you wish?

Q 1942, yes.

THE COMMISSIONER: No, the information that I desire is how much timber he cut from 504 during the course of the Deep Bay Logging operations.

MR. McPHERSON: Up until he left in 1942.

THE COMMISSIONER: He has never operated since, has he?

MR. McPHERSON: No.

A From 1931, September to December, 3,390,000. In 1932, 11,314,421, in 1934, 10,225,000.

THE COMMISSIONER: It is obvious he has not understood

the question.

Q What quantity of timber did you cut from Block 504 alone during the period of Deep Bay Logging operations? A: I couldn't tell you separately, because they were all cut together.

MR. McPHERSON: Mr. Kagetsu, in your original claim which you swore under oath in Toronto, you claim $7,000.00 for Block 504, and you stated to me the other day that your overall price per thousand was $3.00, and if you take $7,000.00 at $3.00 a thousand, it works out at approximately 2,333,000 feet of timber that you were originally claiming for in 504.

THE COMMISSIONER: Now, just a moment. This question is becoming so long it is going to be impossible to translate.

MR. McPHERSON: Yes, my lord.

Q Mr. Kagetsu, in your original claim, as I work it out, you claim 2,300,000 feet of timber on Block 504. Now you are claiming 7 million feet.

THE COMMISSIONER: Suppose you break it up. Is that the fact? Was he, under his original claim, claiming for 2,300,000 feet?

MR. McPHERSON: My lord, the evidence has already been given. He said he was claiming at a rate of $3.00 a thousand, and I have simply done the arithmetic on his claim for $7,000.00.

THE COMMISSIONER: Just put it to him, was he claiming that much timber in his original claim.

MR. McPHERSON: Q: In your original claim, Mr. Kagetsu, were you claiming 2,353,000 feet on Block 504?

A I didn't make any calculations by feet, as I don't know very much about it in Toronto. I just declared at the solicitor's office, $7,000.00 for the claim.

Q Mr. Kagetsu, I refer you to Exhibit 10, which is the inventory that you delivered to Mr. WRay. You prepared that inventory?

A Yes, I did.

Q Now, are you suggesting, Mr. Kagetsu, that having gone to the trouble of preparing that detailed inventory on your calculation, you didn't know how much timber you had?

A I know that I had 27 million feet of timber when I made that inventory.

Q In 1942, you had 27 million feet of timber, is that correct?

A In 1947?

Q In 1942. In 1942, when he prepared that inventory, how much timber did he think he had?

A I calculated it at 27 million.

Q That is 17 million?

THE COMMISSIONER: He said 27 million.

THE INTERPRETER: 27 million feet.

MR. McPHERSON: Q: In 1942.

A In 1942, yes. I didn't mean to sell the timber, so I made really a rough calculation, but I think there was more than that.

Q So that, Mr. Kagetsu, when you drew your claim

in Toronto, you knew that you had 27 million feet of timber, did you?

A I knew I had 27 million feet, but as I had no reference, or no document to refer to, I gave the rough calculation.

Q In your original claim, Mr. Kagetsu, you claim $53,200.00 for the standing timber, and you have stated that is at the rate of $3.00 per thousand. Now, do you understand my statement?

A Yes. I gave that estimate, but I really didn't know the market value of the timber until I came to Vancouver.

THE COMMISSIONER: Q: Did you realize you were taking an oath at the time that you gave that estimate, that the contents of the statement were true?

THE COMMISSIONER: Pursue that with this man, Mr. McPherson. I am getting a little impatient with him.

MR. McPHERSON: Did you say not to pursue it, my lord?

THE COMMISSIONER: Point out to him that he has taken an oath as to these figures, and ask him if he realized he was doing so at the time he signed the document.

MR. McPHERSON: Q: Mr. Kagetsu, in Toronto when you signed this document -- you admitted you signed those documents to his lordship the other day in cross-examination -- when you signed this claim for the company and the claim for your own timber, did you realize that you were taking

an oath and that what was in these claims you were swearing to and certifying was correct?

A This statement is quite true, but there are no particulars about the feet of timber in this statement.

Q Mr.Kagetsu, it is true, then, that you were claiming for the Deep Bay timber and your own timber in the Deep Bay area $53,200.00 in your original claim? That is true, is it?

A Originally?

Q Yes. That is the claim.

A Yes, it is.

Q And it is also true you told his lordship the other day that your estimates in Toronto were on the basis of $3.00 a thousand, is that correct?

A Yes,that was in Toronto I did it.

Q That is correct? A: Yes.

Q Now, Mr. Kagetsu, if your claim is $53,200.00 at $3.00 a thousand, it works out to 17,735,000 feet of timber you were claiming in Toronto. Would that be approximately correct?

A I didn't calculate it by feet at all.

Q Mr.Kagetsu, I have done the calculating for you. Would you admit to me that when you were in Toronto you did think you had approximately 17 million feet of timber?

A It may be right. That may be right. That is while I was in Toronto, but as I didn't have any reference, I couldn't say that is correct.

Q Mr. Kagetsu, I show you Exhibit 13 again. Would

you look at this Exhibit 13, and I show you a note here written on the exhibit, "17 million feet; 60% fir, 30% hemlock, 10% cedar."

A Yes.

Q Now, do you say to his lordship that this is not a map which was in the Deep Bay company records?

A As I didn't make the map, I don't know who wrote that.

THE COMMISSIONER: Now, the witness is not answering the question. I am in doubt about whether he is being deliberately evasive, or whether he is extremely dull.

I wonder if counsel for the claimant would like to discuss the matter in which the witness is giving his evidence with him and see if we cannot get somewhere? It is inconceivable to me that he knows so little about his own claim as he professes to know.

MR. McPHERSON: My lord, it is the Government's intention to attempt to prove this map did come from the Deep Bay records, and while Mr. Kagetsu says he doesn't know the map, I haven't been able to find whether he knows itwas in the records.

THE COMMISSIONER: Just put that question to him. I propose to give counsel an opportunity to talk to him after you finish with this.

MR. McPHERSON: Q: Mr. Kagetsu, do you know who prepared this map?

A I don't know.

Q You don't know. Do you know whether your son prepared it? A:No. My son made them, but different to this one.

Q Did your son do drafting for the company and make maps for the company?

A Yes, but not this one.

Q You don't know whether he made this one?

A No.

MR. McPHERSON: If my learned friend wants an adjournment, my lord, all right.

THE COMMISSIONER: I do not feel inclined to take any more time with this witness, unless we can get something out of him, and it is obvious that either he knows nothing, and therefore we are wasting time examining him, or he is being deliberately evasive, and I would like to give his counsel an opportunity to explain the situation to him in the hope, perhaps, that we can get somewhere with him.

MR. BREWIN: We will be glad to do that, my lord. I didn't want to intervene in the cross-examination, and appear to be trying to help the witness about this claim that was prepared in Toronto, but your lordship will see that he swears this to be the information to the best of his knowledge. These items on which he is cross-examined in the amount of his claim -- he did prepare the claim when I was there, and I can bear out what he says, that he had very little actual information, and there was some rush about it. There was

only a limited time in which to file some of the claims, and I can bear that part of it out.

THE COMMISSIONER: I can fully appreciate the difficulty under which you were labouring at that time, but, Mr. Brewin, here is the situation, where an apparently successful logging operator who had been in business in the province for years asserts he knows nothing as to the content of his timber holdings. Now, that is inconceivable. Either he does not understand the question that is being put to him, or he is afraid of being pinned to some figure and is therefore being deliberately evasive.

MR. BREWIN: My lord, we will have a discussion with Mr. Kagetsu.

THE COMMISSIONER: I think it is only perhaps fair to him to permit him to have it done through his own counsel.

MR. BREWIN: Your lordship, of course, is not overlooking the fact that since 1942 all of his records have been in someone else's hands.

THE COMMISSIONER: I fully appreciate that. Mr. Brewin, if either you or I had a timber holding of the apparent value of this timber, we would know something more about it than this man pretends to know about it. That is what I am trying to convey to him, from my point of view up to the present time he has been a highly unsatisfactory witness, and I cannot give credit in respect of anything he says. For that reason,

I would rather have him stand down and have someone who knows what he is talking about.

MR. BREWIN: We can discuss it in a way that it would be possible to get useful information from him. Quite generally, that can be done.

THE COMMISSIONER: It is quite possible.

MR. BREWIN: But, however, we will discuss the situation.

THE COMMISSIONER: I would like to give you the opportunity to tell him what I feel, if he does not understand it now, befause he has made a very bad impression, as far as I am concerned.

MR. McPHERSON: Now, my lord, I wonder if my learned friend is talking to his client, and I am not trying to trick him, I want to bring the facts before your lordship, but I think I should explain to my friend so he won't waste any more time, what I am really getting at is Mr. Kagetsu made a claim in Toronto for which he had no written records. He then comes out here and makes another claim and increases the timber, I suggest, about 10 million feet. If he didn't have the knowledge in Toronto, and they haven't the cruise yet, then what I am going after is how does he establish that he had 27 million feet today, when he still hasn't his cruise, and where did he get the information about the 27 million. He didn't get it out of his black book, because he says it isn't in the black book.

MR. BREWIN: My lord, I say in response to what my

learned friend says, and I don't want to protect this witness beyond what is at all reasonable, but so much of this matter of how the 27 million is made up, either we shall have to prove it in the course of the evidence that is given, and if this witness says he doesn't know, then we obviously haven't proved it and we will have to prove it somewhere else, and I am wondering how much value there is in trying to get him in a sense, to analyze it. If he knows, of course, it will be helpful.

THE COMMISSIONER: Well, he should know. I am assuming that the man has been a competent logging operator, andyet he comes in here and knows nothing about his holdings.

MR. BREWIN: You see, my lord, it is based on his personal knowledge and his evidence, but I think he should be ready to be fully cross-examined about it, and your lordship may come to the conclusion that his evidence is not very valuable, but insofar as it is based, as it must necessarily be, on information acquired by my friend, and has been confirmed since Mr. Kagetsu has been here. As far as seeking information is concerned, I don't think cross-examination will help.

THE COMMISSIONER: Do not overlook the fact that this witness, earlier on in his examination in chief, made the statement that he always personally checked cruises himself, and he is a competent

cruiser and has been engaged in the business since 1906. So that, I conclude from his own evidence that he was not relying on what other people told him. He had checked the cruises himself, and it was he who did the buying of the timber, yet he comes in here this morning and asserts he was buying acreage, not timber.

However, I will give you an opportunity to talk with him. We will recess for ten minutes.

(PROCEEDINGS RESUMED AFTER SHORT RECESS.)

THE COMMISSIONER: Just before we re-open, I would like to call counsels' attention to the evidence given by Mr. Kagetsu in chief as to his personal knowledge of the contents of various of those blocks.

At page 26 of the transcript on November 28, Mr. Kagetsu was being examined in chief by Mr. Norris and he is asked this question:

"Q: Now, Blocks 504, 566, 276 and 617 . . . . . if you wish me to explain, I am willing to do so."

Then he goes on to make an explanation.

Now, when the witness comes here this morning, and under cross-examination suggests he was buying this land by the acre, and that he knows nothing of the timber content, it is perfectly apparent he is telling an entirely different story from what he told in chief.

MR. BALDWIN: I may say something in explanation, my lord. We have discussed it with the witness and

he didn't intend to convey that at all. It is a deed ofland, and the footage wasn't mentioned in that at all, but we are quite prepared to admit all the way through, as his evidence in chief shows, that prior to the purchase of these blocks the E. & N. would have them surveyed, first of all the land and their blocks and then send their cruiser in, and in some cases Mr. Kagetsu accompanidd their cruisers and made his own cruise.

THE COMMISSIONER: He says he cruised 504 himself, and found it contained twice what the E. & N. timber cruiser said it contained.

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: Having explained the situation to him, is it your desire that the cross-examination should continue, or are we going to get anywhere with this witness at all? Have you some other witness who knows the situation and can be called, because to me it is just a waste of time getting the answers that have been given by this witness to the questions that have been put to him.

MR. BALDWIN: In that connection, I would agree with your lordship that this witness's evidence is certainly not the only basis upon which the claim will be decided, and the evidence of what timber has been cut from these limits is far more accurate than his recollection at that time.

Now, the estimate of 27 million, my lord, if I may clarify it and how it was arrived at; when Mr. Kagetsu came here just past, we had pre-

pared or began to prepare this estimate by getting the cut from the S.& R. account, and that 27 million is arrived at -- well, it is a sort of a mix-up of the claimant's recollection, and we have sort of taken all the factors we had available to arrive at that. The witness's recollection at the time he came from Toronto wasn't the 27 million, as I recall it. The 27 million was arrived at by compilation of various factors.

THE COMMISSIONER: Yes, I can appreciate that.

MR. BALDWIN: I think perhaps the issue is a little confused now as betweenwhat the witness knew as a fact and what he is claiming.

THE COMMISSIONER: I see. Now, in view of one of your earlier statements, Mr.Baldwin, is it possible that the witness's answers are not being accurately translated?

MR. BALDWIN: I think in some instances that may be true, my lord.

THE COMMISSIONER: You have a gentleman sitting here on your right who, I gather, is Mr.Kagetsu's son. He apparently speaks English as well as Japanese. I would be very happy if he would interject if any answer given is not in accordance with his view of what the correct translation is.

But it does appear to me in view of what has transpired previously under cross-examination, and again this morning, that we are just going

through motions with Mr. Kagetsu. We are not getting things that will be dependable at all, and the subject of Mr. McPherson's views I do not propose to stop him on his cross-examination, but if it goes on as it has been going, it appears to me it is entirely waste effort, we are not getting anywhere. So that perhaps, if the discussion you have had with Mr. Kagetsu, we might get on better from now on. Let us try it and see how it works.

MR. BALDWIN: All right, my lord.

THE COMMISSIONER: I prefer, Mrs. Smith, that you should continue as interpreter, but if there is any question in regard to your interpretation, if this young man who is assisting Mr. Brewin and Mr. Baldwin would interject, then if there is something wrong with the translation we can have it pursued.

MR. McPHERSON: My lord, if my learned friends would be prepared to admit the figures that have been supplied to Government counsel by the E. & N. Railway as to the dates of purchases, with the quantities and prices on the various blocks, that would save a lot of cross-examination. I have the figures here.

THE COMMISSIONER: Were you proposing to call an E. & N. representative?

MR. McPHERSON: I wasn't proposing to do that, because I thought I would get the figure out of Mr. Kagetsu fairly easily, but my learned friend has already agreed this morning that one block

had been cruised at 9,300,000.

THE COMMISSIONER: You might discuss it with Mr. Baldwin, Mr. Brewin, and see if you can agree on this E. & N. information.

MR. McPHERSON: I can show my learned friends the letters that set out the figures. I don't think there can be any question about it. In a Commission of this kind, I thought it would be a waste of time to call an official of the E. & N.

MR. BREWIN: Are you putting in the letter?

MR. McPHERSON: I will put both letters in. There has been a correction made in the second letter.

THE COMMISSIONER: Make sure that counsel for the claimants have gone over that letter carefully.

MR. McPHERSON: That, of course, doesn't include Block 195, Mr. Brewin. I have supplied my learned friends with these letters, my lord, before the case opened.

MR. BALDWIN: My lord, we are willing to have Government counsel put that in for the worth of the recorded footage, just as though the E. & N. representative were called instead.

THE COMMISSIONER: Suppose you read the figures into the record instead of putting the letter in, because there might be some thing else in it that is objectionable to the claimant.

MR. BALDWIN: No, there is nothing else in it objectionable, as far as I know. We are quite prepared to put all the letters in.

THE COMMISSIONER: Very well. Read the figures , then,

so I may note them here.

MR. McPHERSON: Taking the claim, Block 504, my lord, 1372 acres, estimated cruise 9,363,000 feet, 1,435 cedar poles, sold for a lump sum of $14,000.00.

THE COMMISSIONER: Yes.

MR. McPHERSON: Block 566 --

THE COMMISSIONER: When was the sale?

MR. McPHERSON: The first payment was made July 8, 1939, and the final payment on April 1st, 1941.

THE COMMISSIONER: The sale date is as at July, 1939, I take it?

MR. McPHERSON: Yes. Block 566, 487 acres, the first payment on September 10, 1940, the estimated cruise 5,646,000 feet.

THE COMMISSIONER: 5,646,000.

MR. McPHERSON: Yes, my lord. It states "no recoverable cedar poles", for a lump sum of $8,000.00.

THE COMMISSIONER: Yes.

MR. McPHERSON: Block 617, 790 acres, and the exact date isn't given, but it says "purchased in 1941". The cruise was 7,298,000 feet, no recoverable cedar poles, and the price was $8,000.00.

276, 1530 acres. The first payment was made February 16, 1932, the cruise was 30,805,000 feet, at $2.00 a thousand, $61,610.00.

THE COMMISSIONER: Yes.

MR. McPHERSON: And 5063 cedar poles, at $4,052.00. I would file the two letters as an exhibit, my lord.

(LETTER MARKED EXHIBIT NO. 1388-16)

MR. BALDWIN: My lord, we would also ask that the following paragraph be read into the record from the letter of September 28th to P. S. Ross & Sons from the E. & N.

"You, of course, understand that the cruise figures given in this letter are merely estimates, which are in no way guaranteed by the company."

MR. McPHERSON: Q: Mr. Kagetsu, do you agree with me that the amount of timber on any particular acre of land varies?

THE COMMISSIONER: Do you think you need an answer to that?

MR. McPHERSON: All right, my lord.

MR. BREWIN: I think we all agree to that.

MR. McPHERSON: My learned friend agrees.

Q Can you tell his lordship, Mr. Kagetsu, what the going selling price for standing timber in the E. & N. belt in the district of Deep Bay was in 1941? What were they selling timber for?

A Between $1.75 and $2.00 per thousand.

THE COMMISSIONER: In what year was that?

MR. McPHERSON: 1941 my lord.

Q What about 1942, Mr. Kagetsu.

A As I wasn't dealing in 1942, I couldn't tell you.

Q In your claim for timber of $108,000.00, are you including any amount for the fact that the timber had been opened up?

A What do you mean by opened up?

Q That there was a railway in there, and the timber had been opened when they were in there?

A Would you repeat that question?

Q In your claim of $108,000.00, which you arrived at at $4.00 a thousand, are you including in the $4.00 a thousand any amount because the timber had been opened, and the railway was in there?

A It adds a certain value to the railway. I put a certain value to the railway. Of course, the price of timber had gone up since, that is why.

(Question interpreted by Kagetsu, Jr.)

THE INTERPRETER: A: No, it isn't that at all?

MR. McPHERSON: Q: How much are you claiming for the $4.00 a thousand for the foreshore right, the booming grounds, the dump, the landing, the coal dock and road bed? How much are you claiming of the $4.00 a thousand for those items?

(Question interpreted by Kagetsu, Jr.)

THE INTERPRETER: A: I am figuring at $3.00 for all those things -- $3.00.

MR. KAGETSU, JR.: If you don't mind, sir, it figures at $3.00 a thousand.

THE INTERPRETER: For the road, I put about 50 cents.

MR. KAGETSU, JR.: That is not for this item, though.

THE COMMISSIONER: He has added 50 cents per thousand to the value of the road?

MR. KAGETSU, JR.: Yes, that is right, your lordship, but Mr. McPherson refers to $108,000.00, I believe.

THE COMMISSIONER: Yes, but he referred to $4.00 a

thousand.

MR. McPHERSON: My lord, the claim is for 50 cents a thousand on the railway, and as an increased value of the railway.

THE COMMISSIONER: That is right.

MR. McPHERSON: Here, in this amended claim, we have $4.00 a thousand, including the railroad bed and the foreshore and so on, in the $4.00 a thousand. Perhaps I could bring the point out clearer by asking Mr. Kagetsu this:

Q Mr. Kagetsu, in your claim you are claiming $4.00 a thousand, which includes the foreshore and other properties, but what are you actually claiming for the timber? How much a thousand for the timber?

THE COMMISSIONER: Would you have Mrs. Smith read that to him and ask him the question again.

MR. McPHERSON: Q: The question is, how much of the $4.00 a thousand is for the timber?

A I don't quite remember claiming $4.00 for these things, but for the timber I have claimed $4.00 a thousand.

THE COMMISSIONER: Is it not apparent that the claim for $4.00 a thousand for the timber is based on the fact that these improvements have been made available to the timber.

MR. BALDWIN: This amended claim, my lord, pursuant to your direction, Item 2 was drafted by me. Mr. Kagetsu didn't see it before it went in. I think that is where the confusion arises, and I

do not see that anyone but an accountant with about a week tospare on his hands could possibly allocate to the bridges and construction an amount in that $4.00 a thousand.

THE COMMISSIONER: I do not think you will get anywhere with that, Mr. McPherson. I take it from the claim, as drafted, and counsel will correct me if I am wrong, that the figure of $4.00 per thousand for the timber is arrived at because of the fact that these foreshore rights, booming ground and so on, with the road beds, are there and available for use in the removal of that particular timber.

MR. BALDWIN: That is correct, my lord.

THE COMMISSIONER: I do not think you will get very far with this witness in trying to ascertain how he breaks it down, because apparently he does not even know it is there.

MR. McPHERSON: My lord, in view of the fact this is a claim, and my learned friend prepared it, and while my learned friend may not be an accountant he must have arrived at $4.00 a thousand in some way. What did he start with for the timber? That will be a very important question in this Commission. What is the timber worth, as timber?

THE COMMISSIONER: He can claim what he will, Mr. McPherson. The amount he may recover will depend on what he proves the value to be, and in the absence of proof, the claim does not mean very much.

MR. McPHERSON: Thank you, my lord.

Q Mr. Kagetsu, would you agree with me that at the time you left the Deep Bay operations, you had removed the most accessible timber?

(Question interpreted by Mr. Kagetsu, Jr.)

THE INTERPRETER: A: I took thetimber out by stages, not because it was the easiest way, or not because it was accessible timber.

THE COMMISSIONER: Q: Now, Mrs. Smith, will you pursue that further with the witness? Counsel makes the suggestion that in 1942 when this witness was evaucated, he had already removed most of the readily accessible timber on these limits. What does he say?

MR. BALDWIN: With great deference, my lord, I think the question was he had removed the most accessible, not the most easily accessible.

THE COMMISSIONER: Q: All right, he had removed the most accessible timber.

A Yes, I have done so.

THE COMMISSIONER: Do not overlook the fact, Mr. McPherson, that "accessible" largely depends on price.

MR. MCPHERSON: Yes, my lord, I realize that.

Q Mr. Kagetsu, do you know what a Swedish gang saw is? A: Yes, I do.

Q How many Swedish gang saws would you estimate there were on the coast of British Columbia in 1941, when you were here?

A I can't tell you.

Q Mr. Kagetsu, was it economical in 1941, and in the spring of 1942, before you left, to cut lumber out of logs that were 12 inches high, breast high, when they were cut in the woods?

A Most of the good timber I had cut down of the 12 inch breast high, and that was the most economical.

Q Did you bundle the logs when you took them out? The 12 inch logs, did you bundle them?

A No, I didn't do it.

Q How many cars of logs a day did you average taking out down your railway when you were logging, just before you left in 1942? In March, of 1942, how many cars a day would you take out of the woods?

A On a good day, he says about 18 cars, and poor days were, as he calls it, six. The average was about 12.

Q Andhow x many feet of timber on each car, on an average? A: On the average, you can load about 6,000 feet, but I have done about 5500.

THE COMMISSIONER: Q: That is 5 to 6 thousand per car?

A Yes.

MR. McPHERSON: Q: Mr. Kagetsu, with respect to your railway and bringing these cars out, am I correct that you frequently had spills, and you dumped logs off the cars on the way out?

A It was very seldom, but there were some that rolled out, but it was only a very few incomparison.

Q Would you say that at the time you left that there wasn't a lot of timber lying along the right-of-way that had been dumped off the cars?

A There might have been a few, but I didn't see very many.

Q Now, Mr. Kagetsu, would I be correct if I said that your timber operation had reached the point where it was more economical to log by truck than by rail? A: I always prefer the railway to the truck.

Q Yes, but do you agree it would be more economical to log the remaining timber by truck?

A Some places are difficult for the railway to get at, then I use the truck beyond that.

MR. KAGETSU, JR.: He had considered using the truck in different places.

THE INTERPRETER: As far as the railway went, I had considered to use trucks.

MR. KAGETSU, JR.: Not that way -- excuse me -- it would be just bringing it to the end of the railway, not out to the dump.

MR. McPHERSON: Q: And you would use the trucks, I suppose, because the remaining timber was at a high altitude and you would have had very steep grades for your railway, is that correct?

A Yes, it is.

Q Now, Mr. Kagetsu, when you use a truck to haul to the railway, it costs quite a bit of money, doesn't it, to transfer the logs from the truck to the railway? Is that correct?

A Yes.

Q Now, with respect to B lock 195 at Cowichan, you were a director of the Ocean Timber Company?

A Yes, I was.

Q Did x the Ocean Timber Company own block 403 in the Cowichan district?

A Yes.

Q And did the Ocean Timber Company sell Block 403 to a Mr. Hunter? A: Yes.

Q That was the Lake Logging Company, wasn't it?

A Yes, the Lake Logging Company.

Q In your original claim, you claimed $187,500.00 for Block 195. How much timber didyou estimate was on that block?

A I didn't go in, so it was just left as I bought it.

Q To arrive at your original claim of $187,500.00, am I correct that you took $3.00 a thousand on the estimate of what you ghought was there?

A No, I never calculated it at $3.00 a thousand, but at $5.00 a thousand, as it hasn't beentouched at all.

THE COMMISSIONER: What is this about $5.00?

MR. McPHERSON: $5.00 a thousand is what he xx says he arrived at the figure of $187,500.00.

MR. BALDWIN: My lord, I think the witness is confused with his amended claim and the one my learned friend is referring to.

MR. McPHERSON: Q: In the original claim, Mr. Kagetsu, how did you arrive at the figure of $187,500.00

A I had heard the price had risen that high, so

I put in that claim, but I don't know if it was at the rate of $3.00 a thousand.

Q So, the $187,500.00 was a guess, was it?

A Yes, it was a guess, sir.

THE COMMISSIONER: Just let me understand that. Did the witness say he had put a value of $3.00 a thousand on Block 195?

MR. McPHERSON: No, my lord, he has changed that. He was confused. He says his original claim of $187,500.00 for Block 195 was a guess.

THE COMMISSIONER: You might pursue that a little further and see what he says about the contents of Block 195.

MR. McPHERSON: Q: When did you buy block 195?

A 1937, I think.

Q Did you have a cruise of the timber made before you bought it?

A I cruised it myself.

Q And how much timber did you estimate was there?

A It was cruised by Mr. Sheehan, and I checked on that cruise. I estimated it, that it was more than 50 million feet.

Q And in your new claim, you are claiming for $5.00 a thousand. That is correct, isn't it?

A Yes.

Q Now, the calculation of your original claim, $187,500.00 for 50 million feet of timber, is $3.75 a thousand. Now, how do you explain $5.00 a thousand that you are claiming today for the timber? How do you explain the difference?

A Since I came to Vancouver, I made many inquiries and I find timber had risen and that was the market value, $5.00 per thousand.

Q Well, $5.00 per thousand, is that today's market value for standing timber?

A No, that was the time when it was sold by the Custodian in 1943.

Q Now, you are claiming $5.00 a thousand for block 195, which had never been opened up, and yet you are only claiming $4.00 a thousand for timber that has been opened up, and there is a good railway there, and camp buildings are there, and there is a foreshore lease. Why are you claiming less for timber that was opened up than for timber that was never opened up?

A Block 195 contained much better quality of timber than the one I had opened up in the other block.

Q With respect to Block 195, am I correct that in order to open that timber up you would have to build a bridge across the Cowichan River?

A The railway company has a bridge across the river, so I have nothing to do, and no expenses attached to it.

Q Do you know the Cowichan district very well? Do you know the district?

A I know a little of it.

Q You cruised block 195. Am I correct that the river is between the block of timber and the railway? A: There is no river between the timber and the railway.

Q Well, Mr.Kagetsu, in logging block 195, you would ship over the C.N.R. track, would you? Is that how you would take the logs out?

A I would take it out by C.P.R.

Q How much a thousand would they charge you to bring the logs out in 1942?

A I don't know what the charge would be in 1942, but I know what it was in 1939, and 1940.

Q You told my learned friend that you purchased this timber for $75,000.00 in 1937, and that in 1942 it had cost you $121,515.00. Is that correct?

THE COMMISSIONER: He has sworn to it.

MR. McPHERSON: Q: Then, Mr. Kagetsu, the difference between the $75,000 and the $121,000.00, I understood you to say, was taken up by taxes, forest protection fees or dues and interest. Is that correct?

A Yes, it is, sir.

Q Now,Mr.Kagetsu, I suggest to you that the timber dues on that timber were $875.00 a year, is that correct -- the taxes?

A It was about that.

Q And from 1937 to 1942 is five years, and that is $4375.00. A: From 1935?

Q From 1937 to 1942 is five years. That would be $4375.00. Now, do you accept my figure?

A That is the taxes only -- the dues only?

Q That is the taxes and forest protection dues.

A Yes, I think it must be.

Q Now, if you will accept, for the purpose of this

question that that is the correct figure, and the interest that you paid was 6%, is that correct?

THE COMMISSIONER: He has sworn to that.

MR. McPHERSON: Q: Well, at 6% for five years on $75,000.00, I work it out at $18,750.00. Now, I realize you can't work that out now, but if you will accept these figures your counsel can check me if they are wrong.

THE COMMISSIONER: Is it not $22,500.00, if it is $4500.00 a year?

MR. McPHERSON: I find myself in the position, my lord, of having to abandon this line of cross-examination for the moment, because I think the figures are wrong, my lord.

Q Mr. Kagetsu, with respect to the Ocean Timber and Block 403, the Ocean Timber Company hadn't logged any of Block 403?

A Yes.

Q With respect to the felled and bucked timber, Mr. Kagetsu --

THE COMMISSIONER: Where?

MR. McPHERSON: The felled and bucked timber at Deep Bay.

THE COMMISSIONER: You are leaving 403 now?

MR. McPHERSON: I am leaving 403, yes, my lord.

Q With respect to the felled and bucked timber at Deep Bay, in your original claim you didn't claim any timber on Block 274.

A Could he see the map?

Q Yes. In your original claim, you didn't claim any timber on 274, and that is where the felled and bucked timber was, wasn't it?

A There was some standing timber.

Q But you didn't claim any standing timber on that block of timber in your original claim, did you?

A There shouldn't be this line at all, (indicating) he says. The bucked timber was here and there was some green timber left here, (indicating).

Q Now, you are claiming 2 million feet of 276 and 2,500,000 of felled and bucked timber.

MR. BREWIN: Just a moment. Is my friend quite right in saying that the original claim didn't claim any standing timber? My recollection is that the original claim didn't attempt to specify what timber there was, it just valued the property as a whole.

MR. McPHERSON: No, it was a better claim than the amended one, because it set a figure for the 504 timber land and 566 timber land. That is in Mr. Kagetsu's claim.

THE COMMISSIONER: How do you arrive at any timber content as having been claimed?

MR. McPHERSON: My lord, I am not arriving at timber content. I am pointing out to the witness that in neither claim could I find Block 274. So, I could find no claim for timber.

MR. BREWIN: Oh, that is all right.

MR. McPHERSON: I said he didn't make any claim at all for 274.

MR. BREWIN: Made no claim at all?

MR. McPHERSON: That is quite correct.

THE COMMISSIONER: Put he question to him that he he had not made any claim in respect of 274.

MR. McPHERSON: Q: In your original claim, am I correct that you made no claim at all for Block 274? A: I don't quite remember, but I received a letter from the Custodian as to what they had sold, and I went by that, and it might not have been under this.

Q Well, do you mean by that, Mr. Kagetsu, that your claim is based on a letter from the Custodian as to the blocks that were sold to MacMillan?

A I based it on the blocks that the Custodian had sold.

Q But did the Custodian's letter tell you there was timber on 274?

A I don't remember seeing it.

Q Am I correct, that in September of 1945 the felled and bucked timber had been lying in the woods for two years?

A I hadn't seen it, but it must have been there.

Q Would you agree that hemlock and balsam lying on the ground for approximately two years will deteriorate considerably?

THE COMMISSIONER: Is this confined to 274?

MR. McPHERSON: No, it is the felled and bucked timber on two blocks. It is on 274 and 566, my lord.

A Some would deteriorate and some don't.

Q Could I have Exhibit 11, Mr. Secretary? Now,

my lord, Exhibit 11 is the letter written by Mr. Kagetsu to Major Austin C. Taylor, on March 31, 1942. I draw this paragraph to your attention, Mr. Kagetsu, paragraph 2, "Unfortunately in this district I own a logging operation . . . . . almost valueless." That statement was made by you to Austin Taylor?

A Yes.

Q That is true, isn't it?

A I wrote that letter, because I am a business man and I wanted to remove the timber quickly, so I wrote that letter.

Q Are you saying the statement made in that letter about the felled and bucked timber deteriorating is not true? A: As I have said before, some deteriorates and some don't.

THE COMMISSIONER: Now, Mr. McPherson, is it your contention that deteriorating assets such as felled and bucked timber are solely for the account of the claimant when he has been compulserily evacuated, as this man was?

MR. MCPHERSON: My lord, we will argue that the condition of the assets at the date of sale governs the fair market value, rather than the condition of the assets at the date the Custodian took them over; that the fair market value under the Terms of Reference is the fair market value as at the date of sale, and the Custodian could not prevent these logs from deteriorating, or operate the railway to bring them out, and we

will contend that Mr.Kagetsu and his solicitor were negotiating about selling this property for approximately a year, during which time the Custodian stood aside and allowed them to negotiate, and it was in 1943 the Custodian sold. That is what the Government will contend.

THE COMMISSIONER: You will say if deterioration took place, it was a loss which cannot be passed on to the Custodian.

MR. McPHERSON: Yes, my lord. Otherwise, if that principle isn't accepted, then of course that would apply all the way through on chattels, cars and buildings and everything, and the Custodian might be held liable for the condition of the house in 1942, which he didn't sell until 1944, and our submission is the Custodian is only required to obtain a fair market value under the Terms of Reference, as at the date of sale.

MR. BREWIN: Your lordship may remember that this matter was discussed in connection with the general claims, and I think your lordship said something to the effect that in certain circumstances, while it might not strictly be within the Terms of Reference, you might bring certain facts to the attention of the Government. Before we get to any argument on that point, I would refer your lordship back to what you said then.

THE COMMISSIONER: I remember it in a very general way. We will just leave it there. I wanted to

be sure what the position of the Government was in regard to it.

MR. McPHERSON: Q: Mr. Kagetsu, you were originally claiming $9.00 a thousand for your felled and bucked timber, is that correct?

A Yes.

Q Mr. Kagetsu, you are claiming now $10.75 a thousand for felled and bucked timber, and $12.75 per thousand for cold deck timber. How much do you estimate that it would cost in 1941 or 1942 to take felled and bucked logs and cold deck them?

A You mean the expenses of logging?

Q The expense of yarding the logs and cold decking them after they have been felled and bucked?

THE COMMISSIONER: Do you not think it would be better to break it down and get the falling and bucking costs, first of all, and cold decking independently?

MR. McPHERSON: Q: Yes. How much do you estimate it costs to fall and buck timber, or did cost in 1941 up to the time of your departure?

A $1.25.

Q $1.25 a thousand? A: Yes.

Q And how much do you estimate it cost to yard and cold deck these logs?

A About $2.75 — $2.50.

THE COMMISSIONER: Now, just one moment. I think you better follow that up. You will notice the difference between felled and bucked and cold decked in the claim. It is only $2.00.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: Now, would you pursue that with the witness.

MR. McPHERSON: Q: Now, Mr. Kagetsu, you are claiming that the felled and bucked timber is only worth $2.00 more if it is cold decked than if it isn't cold decked.

A He says cold decked is only once a trip, or something.

THE COMMISSIONER: Would you please speak up, Mrs. Smith?

A I think you can explain it.

MR. KAGETSU, JR.: As a matter of fact, I didn't grasp it.

THE INTERPRETER: He says cold decked is only once, so it is only about $1.50 -- $1.00. Between $1.00 and $1.50, and the yarding would cost extra to that.

MR. McPHERSON: Q: Mr. Kagetsu, after you fall and buck the trees, you yard them to cold deck them, don't you? A: He says that the pole is here and here, and to get the timber to here to the cold deck, he says it would cost a dollar more, as it would have to be brought here and then on to this pole, because the pole here is pretty high, so this is $1.00 less.

Q So, it isn't $2.50 to cold deck, it is $1.00, is that right? A: The cold deck and yarding costs $2.00. For both it costs $2.00.

THE COMMISSIONER: Q: Both yarding and cold decking

costs $2.00. A: Yes, $2.00.

MR. McPHERSON: Q: That now explains, my lord, how the difference is arrived at. Mr. Kagetsu, how much did it cost you a thousand in 1941, up until your departure in 1942, to put the logs in the water after you had yarded them and cold decked them? A: He says, "Could I write it, as it is rather complicated".

Q Perhaps , Mr. Kagetsu, you can tell me, how much did it cost to load the logs on the flat cars?

THE COMMISSIONER: I think you better stay with it now.

A To cut the timber, $1.25, and to yard and cold deck it, it is $2.50.

THE COMMISSIONER: Q: $2.50.

A $2.50, yes, and to build a railway road is $3.00, and then loading on to the railway is 75 cents.

MR. McPHERSON: Q: What is the $3.00?

A $3.00 for the road -- making the road for the railway-- $3.00.

THE COMMISSIONER: Q: Loading is 75 cents?

A Loading is 75 cents, and then the freight, $1.50.

MR. McPHERSON: Q: Freight to what?

A Freight to the train.

Q That is to the log dump?

A Yes, that is right, transportation. Booming is 30 cents. Altogether it is $3.30.

THE COMMISSIONER: Transportation to the log dump was--?

MR. McPHERSON: That is $1.50, my lord.

THE COMMISSIONER: And 30 cents for booming.

MR. McPHERSON: I assume, my lord, taking the $3.00 off, it works out at $6.30.

Q Now, Mr. Kagetsu, what were you selling logs in the water, boomed up in Deep bay, for in 1941?

A The fir was about $15.00 to $16.00. Hemlock was about $11.00. I mean approximately, not exactly.

Q Mr. Kagetsu, the evidence is that it only cost $1.25 to fall and buck timber, and your claim for standing timber is $4.00 a thousand. Why is felled and bucked timber worth $10.75 a thousand?

THE COMMISSIONER: Do you think you will get anywhere with that? Isn't that rather argumentative.

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: If counsel for the claimant want to pursue it later, they are free to do it. I am afraid we are not going to get very far with this witness through an interpreter on cross-examination of that type.

MR. McPHERSON: Q: Mr. Kagetsu, if you are claiming $12.75 a thousand for felled and bucked timber cold decked, and it cost you $6.30 a thousand to get it boomed up at Deep Bay, it is $19.05 a thousand you would have to sell it for -- you would have to sell it for more than $19.05 to make a profit, wouldn't you?

THE COMMISSIONER: Well, that is self-evident.

MR. McPHERSON: Do you recognize this, Mr. Kagetsu, as a book of the company? You just look at this and tell me if that is a book belonging to the company.

THE COMMISSIONER: Now, Mr. Kagetsu can have an opportunity to look at it at lunch time and satisfy himself that it is.

We will recess now until 2 o'clock.

(PROCEEDINGS ADJOURNED UNTIL 2:00 P.M.)

I hereby certify the foregoing t
be a true and accurate report o
the said proceedings.
I. P. Hanrahan
Deputy Official Stenographer

Vancouver, B. C.,

November 17th, 1948. 2:00 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. McPHERSON: Mr. Kagetsu, I will take up this matter of Block 195 now.

EIKICHI KAGETSU, resumed the stand, testified further as follows:

CROSS-EXAMINATION CONTINUED BY MR. McPHERSON:

Q Mr. Kagetsu, this morning we were discussing Block 195 -- on Exhibit 4, my lord. That is the map of Vancouver Island.

THE COMMISSIONER: Yes.

MR. McPHERSON: Q: You will notice on that property that the C.N.R. Railway track crosses the Cowichan River further down than Block 195 -- right there.

A I see -- 195 -- yes.

Q Now you stated that you were going to ship out by the C.P.R. Railway, is that correct?

A Yes.

Q And the C.P.R. Railway track is on the other side of the river all the way around?

A No, no, the C.P.R. Station is in this spot. My railway connection is here.

Q Mr. Kagetsu says, my lord, pointing to the map, that it was his intention to log Block 195 by the railway going up to the station at Lake Cowichan.

THE COMMISSIONER: I see it.

MR. McPHERSON: Q: Are you going to log it by truck or

by railway?

A There was a railway in 403 before.

Q But that railway had been taken up, had it not?

A That was sold to the Deep Bay Logging Company -- I don't know.

THE COMMISSIONER: What is the answer?

MR. McPHERSON: He says it was sold to the Deep Bay Logging Company and he does not know.

THE COMMISSIONER: He proposed to operate by transporting his logs across Block 403 into Lake Cowichan station.

MR. McPHERSON: Yes, that would be instead of going by 195 to the C.N.R. which would mean approaching the Cowichan Station as I suggested to the witness this morning.

The COMMISSIONER: Have you fixed the date as to when the sale of Block 403 took place?

MR. McPHERSON: I am going to call evidence on 403. It has nothing to do with this claim at all.

THE COMMISSIONER: I appreciate that.

MR. McPHERSON: I am going to call another witness on that. I have no evidence on it yet, but I intend to get it in cross-examination now.

Q Mr. Kagetsu, I show you the company ledger. This is the company ledger, is it not?

A Yes, yes.

Q And I show you a page under the index letter, "R", my lord, and unfortunately the pages are not numbered. It is page 16 under "R".

A 16.

Q Page 16. You will notice written in here the date 1941. A: Yes.

Q Fir stumpage, July to December; hemlock, fir, cedar, July to December; fir stumpage $1.50 January 1st to June 30; hemlock and balsam and cedar, $1.00, from January to June 30th. Now would that be the stumpage shown there that was paid for the timber?

A I don't know.

Q Would you agree with me that those figures would be correct that are in the company's ledger?

A No.

Q You do not agree the figures are correct?

THE INTERPRETER: These figures should not be here, he says. He does not know.

THE COMMISSIONER: I would like to have what the answer was through the Interpreter. I did not hear it.

(Answer read by the Reporter).

MR. McPHERSON: Q: Mr. Kagetsu, you owned some of the timber that the Deep Bay Logging Company was logging, didn't you?

A Yes.

Q Did the Deep Bay Logging Company credit you with that stumpage? Did they credit you with stumpage on timber cut on your blocks of timber?

A Would you please refer it to the bookkeeper. I don't know anything about this.

Q You cannot tell me whether the figures are correct or not?

A No.

THE COMMISSIONER: Will you verify it through the witness that that is the company's ledger?

MR. McPHERSON: Q: Mr. Kagetsu, this is the company's ledger, is it?

A I think it is. Would you mind, please, asking the bookkeeper who is here?

THE COMMISSIONER: Let the witness ascertain from the bookkeeper himself whether this is the company's book.

A Yes (referring to the bookkeeper).

THE COMMISSIONER: Now what does the witness say? Let us have his answer.

MR. McPHERSON: He says yes.

THE COMMISSIONER: We have not had it from him -- just from the bookkeeper.

MR. McPHERSON: Q: Is that the company's ledger?

A Yes.

Q Can you tell his Lordship anything more now about the books now that you have talked to the bookkeeper?

A This is the timber that I had, and they cut it so they put it into this book.

THE COMMISSIONER: I am sorry I did not hear that, Mrs. Smith.

A This is the timber I had and the company had cut it and so they credited me with this.

MR. McPHERSON: Q: And the entries are correct, are

they? A: Yes, it is correct.

THE COMMISSIONER: Now what page is that again?

MR. McPHERSON: Page 16, under the letter "R". If my learned friend agrees, I will have that copied and will file a copy as an exhibit, rather than file the whole book.

MR. BREWIN: That is all right.

MR. McPHERSON: Q: Now I show you a page headed "Trading and Operating Account".

A Yes.

Q And you will notice there are three sheets here -- three loose sheets that have been pasted in, my lord. I will point out the liquidator pasted the sheets in rather than lose them.

A Yes.

Q Now these figures, Mr. Kagetsu, on these loose pages, you will notice correspond to the figures on the ledger page itself. I show you an entry here: inventory, December 31, 1941, $31,058.00; and you will notice on the first of the loose sheets, $31,058.00. Now that is under date of December 31st, 1941. Now, Mr. Kagetsu, I draw to your attenion in that inventory sheet you have felled and bucked and cold-decked -- does that mean felled and bucked and cold-decked?

A Yes.

Q You agree with that?

A I think so.

Q And you will notice in your company's inventory sheet, $5.00. Is that the price that you were putting on felled and bucked timber in 1941? A: That is the company's estimate, yes.

Q That would be $5.00 a thousand. Now, my lord, I would like thepermission of your Lordship and my learned friend to make copies of this page of the ledger, and the slips, and file them as exhibits.

THE COMMISSIONER: Well, let us get the numbers. The ledger sheet on page R-16 will be Exhibit 17. You will make a note of that, Mr. Secretary -- there will be filed with you a copy of page "R" -- that will be Exhibit 17.

(COPY OF PAGE "R" MARKED EXHIBIT NO. 1388-17).

THE COMMISSIONER: And the inventory sheet to which counsel is now referring showing felled and bucked and cold-decked timber will be Exhibit 18.

(COPY OF INVENTORY SHEET MARKED EXHIBIT 1388-18).

MR. McPHERSON: It is the twentieth page from the end of the book, my lord.

THE COMMISSIONER: Has the witness verified those figures both as to quantity and price as being correct?

MR. McPHERSON: Yes, I think he did, my lord. The quantity, my lord, will not be correct at the time the Custodian took over -- it is 3,050,000 as at 1941.

Q Would you agree with me the figures given on those pages and in the inventory are correct?

A This was the calculations made at the end of the year and it was put down.

THE COMMISSIONER: Are those entries made by Mr. Kagetsu personally?

MR. McPHERSON: This is the trading and operating account of the company itself.

Q Mr. Kagetsu, did you ever give an option to anyone offering to sell them the Deep Bay Logging Company, and all of its assets?

A I did not give any option, but I said -- yes, I had given an option.

Q Did you give an option to Mr. Simpson of $75,000.00 for the Deep Bay Logging Company including your own timber in that area?

A It depends on the date, he says. Will you please tell me what date?

Q Well, what date did you give an option to Mr. Simpson?

A I don't know if it was to Mr. Simpson or not, but it was at the office of Mr. Simpson I gave the option of $125,000.00.

Q Now, Mr. Kagetsu, am I correct that Mr. Stewart, a barrister in this city, was negotiating for you and with you, with Mr. Simpson for the sale of the Deep Bay Timber Company in March, 1942?

A Did you say the year was 1941?

Q 1942. A: He says he

does not remember 1942, but when he talked over with Mr. Simpson it was 1941. I don't remember if I signed any papers or anything -- I would like to see it.

Q Well, Mr. Kagetsu, it was in 1942 that you were evacuated. Am I correct that Mr. Stewart carried on negotiations in your behalf in an attempt to sell the Deep Bay Logging Company in 1942?

A It was after I was evacuated that Mr. Stewart came and asked me if I would sell it. If I did not, he said, the Government would confiscate it, and so I told him if there was a chance of doing so, to do so.

Q But before Mr. Stewart went to see you, wasn't he in touch with you by letter and telegram about the sale of Block 195 and of Deep Bay both? A: I had never negotiated by letter or telegram until I went to Minto, but I spoke of it before I evacuated with Mr. Stewart.

Q Mr. Kagetsu, did you ever have an offer put forward by Mr. Stewart of $2.75 a thousand for the Deep Bay timber with the right to use the railway equipment to take it out?

A Yes, there was one.

Q Am I correct that you refused that offer, and suggested you should receive $5.00 a thousand, giving the purchaser the right to use the equipment?

A I don't remember exactly, but I think there was

a talk about that.

THE COMMISSIONER: I am sorry, I do not hear you.

A I don't remember exactly, but there was a talk about that -- about this $5.00.

Q Well did he make such an offer?

A Yes, the offer was given. He refused the offer and he said he would take it if it was $5.00.

Q He received an offer of $2.75 which he rejected?

A Yes.

Q And he said he would accept it at an offer of $5.00, is that correct?

A Yes.

MR. McPHERSON: And that offer included the use of the equipment?

A Yes, but then he said if I wanted it back, it was to be returned in the same condition.

Q That is, the equip ment was to be returned in the same condition?

A Yes.

Q Am I correct, Mr. Kagetsu, at the time you made that offer you estimated there were 17 to 18 million feet of timber in the Deep Bay company?

A Seven to eight million?

Q Seventeen to eighteen million.

A If the sale was decided I would have put a cruiser in and I would have given the definite number of timber or number of feet, but that was my rough calculation.

Q What was your rough calculation -- 17 to 18 million feet?

A When was that?

Q In 1942 and 1943 when the negotiations were going on about selling the timber. I am suggesting to you that you offered to sell the timber at $5.00 a thousand including the use of the equipment, on the basis there was 17 to 18 million feet of timber there. Now, was that the amount of timber that you estimated?

A He says I don't quite understand about the measurement of the feet, but he says when I decided to sell the Government would cruise -- no, the Government would measure it and they would know without my telling them.

Q But when you were negotiating through Carl Stewart to sell this timber at $5.00 a thousand, how much timber did you estimate was there at that time?

A I don't think he quite understands. He is trying to emphasize the fact that these deals are made on the scale and not on the standing timber. In other words, he would get the $5.00. (Statement made by Kagetsu, Junior).

THE COMMISSIONER: He was selling on the stumpage basis?

A Yes.

Q Will you put the question to him? Was his estimate at the time he made the offer -- 17 to 18 million?

A On the basis of existing cruises he said there

would be around that figure. However, if he was going to log it himself, he figured he would get 27 or 30 million feet.

THE COMMISSIONER: All right. He says the 17 to 18 million feet was based on the existing cruise. Now, Mr. McPherson, I think we had better know what timber was involved. Was it the Deep Bay holding?

MR. McPHERSON: Yes.

Q And the timber you were negotiating about with Carl Stewart was the Deep Bay timber and your own timber in the DeepBay area, was it not? A; Yes.

Q Am I correct that youwere also negotiating, or Mr. Stewart was negotiating, and reporting to you, with a Mr. P.H. Barnett, for the sale of this Deep Bay property, including your own timber?

A I don't remember hearing that name, Mr. Barnett.

Q Did you ever make an offer to a Mr. Fred Brown, or did your lawyer ever make an offer to sell him the Deep Bay operation for $75,000.00?

A I don't remember the name.

THE COMMISSIONER: Do you remember the amount?

A I don't remember. I don't know who the person was, but Mr. Stewart was trying to sell it to someone at that price.

Q At $75,000.00? A: Yes.

MR. McPHERSON: Q: Well, Mr. Stewart was acting for

you, wasn't he? A: He was not acting for me exactly but he said that I had better sell it. He was advising me to sell it or the Government would confiscate it.

Q Am I correct that Mr. Carl Stewart was a director of Kagetsu Limited, and was a director of Deep Bay Logging Company and of Ocean Bay Timber Company Limited, and you were a director of all those companies also?

A He was the acting lawyer for us, and he only held one share, but he was supposed to be a shareholder of our company.

Q He was a director, wasn't he?

A Yes.

Q Do you recall, Mr. Kagetsu, in October of 1943, when the Custodian was attempting to sell t the Deep Bay operation that Mr. Shears of the Custodian's office wired you putting forward an offer?

A Yes.

Q You remember that? Would you say that was the wire you received? That is a copy of it.

A Yes, I remember.

Q And is this the reply tht you sent to the Custodian?

A Yes, it is the reply.

Q I would like to file the two wires as one exhibit, my lord. One is the wire to Kagetsu on October 28th, 1943, from F.G. Shears and the other is a reply from Mr. Kagetsu, dated November 1st, 1943, addressed to Mr. Shears.

THE COMMISSIONER: What is the exhibit number?

MR. McPHERSON: No. 19.

(TELEGRAMS MARKED EXHIBITS NOS. 1388-19).

THE COMMISSIONER: You might read them, but they need not be put in the record.

MR. McPHERSON: Q: It is obvious in the reply there was some confusion about the $75,000.00. Mr. Kagetsu assumed he should add the $40,000.00 to the $75,000.00, I think. Now, Mr. Kagetsu, in your reply you were willing to accept $40,000.00 for the timber including the buildings and the roadway, is that correct?

MR. BREWIN: Is that a correct way of putting it? He was willing to accept the whole thing together. It is not fair to say that he would accept one part without the other: that is, that he would take one part of the thing without the other half of the other.

MR. McPHERSON: Q: Well, at that time you were prepared to accept $135,000.00 for the Deep Bay Logging Company and your own timber in that area, weren't you?

THE COMMISSIONER: That is clear from his wire that he would accept $135,000.00 -- that is the total of the 95 and the 40.

MR. McPHERSON: Mr. Kagetsu, your acceptance of the $135,000.00 -- am I correct that it was based on a valuation of the timber of $40,000.00?

A That does not include my timber-- yes, it includes the company's timber, but not my timber.

Q When you say it does not include your timber, do you mean Block 195 or the timber at Deep Bay?

A No, he says my timber and the company's timber were separate, so it is only the company's timber that is included in there and not my timber at all.

Q Well, Mr. Kagetsu, did you state earlier you were negotiating to sell the company's timber and your own timber at a figure of $75,000.00?

A I don't quite remember about $75,000.00 quite well, but I know I said $125,000.00 quite well.

THE COMMISSIONER: That is what he said previously. Well you have clarified what timber at Deep Bay was the company's and what was Kagetsu's.

MR. McPHERSON: Yes, I do not think there is any dispute by my learned friend, my lord, from the first claim that Mr. Kagetsu filed under his own name he claimed Block 195, 504, and he claimed 516, but I think that was a typographical error. It was 566.

THE COMMISSIONER: 566?

MR. McPHERSON: 566, yes, so 504 and 566 are the two timber limits at Deep Bay that he was claiming in his first claim. Now I am unable to say in his new claim there are other lots in there that were not in his original claim, and I don't know them.

Q Now with respect to Block 195, Mr. Kagetsu, am I correct before you left Vancouver you listed that block for sale with a Mr. Whitall?

A He spoke of it in 1941 -- Mr. Whitall and I

about selling.

Q Didn't you list that block of timber with Mr. Whitall in 1942?

A I gave him it one or two months before in 1941, but I don't quite remember in 1942.

Q How much was the option in 1941?

A Eleven thousand -- no, a hundred and ten thousand.

Q $110,000.00? A: Yes.

Q Now, Mr. Whitall was acting, was he not, for the Tisdale estate, from whom you were buying 195?

A I am not quite sure to whom he wanted to sell.

Q Well, did Mr. Stewart refer two offers to you that he had received for Block 195 and you turned them both down, is that correct?

A Mr. Stewart said it would be confiscated, and I felt I wanted to make something --

Q Will you ask him the question? Did he receive two offers for 195 through Mr. Stewart?

A It was not before I left -- before I evacuated, but it was after I went to Minto he had the offer.

Q Was one of those offers $100,000.00 less commission?

A I was paying salary to Mr. Stewart so I did not think there were any charges on the offer he made.

THE COMMISSIONER: Mrs. Smith, please ask him to answer the question? Was the offer $100,000.00?

A Yes, I think it was.

MR. McPHERSON: Q: And you were to pay the balance owing on the timber and pay the commission, is that correct?

A Ihave never promised any commission except to Mr. Whitall.

Q Mr. Kagetsu, would you agree with me that from some time in 1941 when you stated you gave an option to Mr. Whitall, until October, 1943, when Mr. Shears sent you that wire, that your timber limits at Deep Bay, Block 195, had been on the market for almost two years?

A I did not wish to sell it. Every time Mr. Stewart gave me an offer, I told him I did not wish to sell it.

Q Mr. Kagetsu, from some time in 1941 to October, 1943, do you agree that there were many inquiries from people about the possibility of buying the Deep Bay timber and Block 195?

A Yes, there were many inquiries.

Q Mr. Kagetsu, would you agree with me if you sell timber for cash you would take less for the timber than if you sold it on terms, with a down payment, and you sold it on a stumpage basis--you would sell less for cash?

A I never intended to sell it on terms, except by cash.

Q Mr. Kagetsu, not respecting your own timber at all --

THE COMMISSIONER: I think your friends would not quarrel with that proposal very much.

MR. McPHERSON: If they don't I would be happy.

MR. BREWIN: The only thing is there should be no difference unless for the fact that standing timber is uninsurable.

THE COMMISSIONER: I think it is the general practice is timber is sold on a stumpage basis there is always the doubt of getting the balance of your purchase price and there is also the fact as you have referred to, and timber is usually sold for a less lump sum in cash than it would be over a period of years. I thought you would admit that. However, we shall pursue it.

MR. BALDWIN: Well I am not capable of doing so - my knowledge is not so great.

THE COMMISSIONER: All right.

MR. McPHERSON: Q: Mr. Kagetsu, you were in the timber business for thirty years in this province. Will you tell his Lordship your opinion if you buy timber for cash you should be able to buy it cheaper than if you buy it on a stumpage basis?

A If timber land was owned by private people the cash payment would have been cheaper, but he says here it would not make any difference whatever.

THE COMMISSIONER; I do not think you are liable to get much further with that.

MR. McPHERSON: If your Lordship would like to adjourn, I think this would be a convenient time.

THE COMMISSIONER: Yes. Now, so far as finishing

with Mr. Kagetsu today, if we sat through to half-past four, could you do that?

MR. McPHERSON: Yes, I think so, my lord.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

MR. BREWIN: My lord, I just want to make one observation about the line of my friend's cross-examination on these various offers and counter offers to say that we are not objecting to this line of cross-examination, but we do not wish by not objectig to abandon the argument we have as to its relevancy when it comes to argument.

THE COMMISSIONER: Oh, I think it is quite proper cross-examination, Mr. Brewin, but the matter of weight to be attached to it is a matter of argument later.

MR. BREWIN: I just thought if we sat quiet and aquiescent it would be considered that we had no objection as to its relevancy.

MR. McPHERSON: If the claimant agrees there were negotiations going on and there was an attempt made to sell this property, and my learned friend does not get the claimant to change his position, surely he is bound by the fact there were negotiations.

THE COMMISSIONER: We will deal with that when it comes to argument.

MR. BREWIN: Well if they deny what Mr. Kagetsu has said as being correct, then I would ask your Lordship to call Mr. Carl Stewart as a

Commission witness.

THE COMMISSIONER: I understand you do not object to the facts as you bring them out, but he says he will take exception to the relevancy of such evidence. He says,"Because we offered to sell at $75,000.00 or $100,000.00 it does not tie us to that price".

MR. BREWIN: That is quite right. It may have some relevancy on credibility or something, but we will take the position that all these offers are entitled to no weight as to their actual value, and we will argue that when we come to it and give authority.

THE COMMISSIONER: Yes, that is what I understand your position is.

MR. McPHERSON: I have no objection to that.

Q Now, Mr. Kagetsu, with respect to the buildings that you are now claiming $4000.00 for in your amended claim for forty buildings, how did you value the buildings themselves? How did you arrive at the value of the buildings?

A You mean the buildings in the Deep Bay Logging Company?

Q Yes, the buildings at Deep Bay.

A There are forty buildings there and he asked estimated about $100.00 in each -- that is the average.

Q And that includes the contents then?

THE COMMISSIONER: That is the way it is set up.

MR. McPHERSON: Q: Now did any of these buildings

have basements?

A No.

Q Did any of them have running water -- toilets?

A There were some that did not have the running water, but some had.

Q Did any of them have toilets?

A No, it was the camp's. There was one separate.

Q Were any of them finished with plaster inside?

A Yes, it was decorated with paper.

Q But not plastered?

A No, no plaster.

Q How many employees did you have on an average at Deep Bay?

A About seventy to seventy-five people.

Q How many of those employees would be people of the Japanese race?

A Japanese were about sixty to sixty-two -- the working people.

Q And with respect to the 15 Occidental people, did they live at the camp or did they live in town?

A There were three living in the camp.

Q And the rest lived in town?

A Yes.

Q Now with respect to the Occidentals who lived at the camp, did they have their own houses or did they live in the camp buildings?

A They all had families so they lived separately in the camp in the separate houses.

Q Now, Mr. Kagetsu, would you agree with me that

these buildings only had a value to a logger, if he was going to use your camp? That is, the buildings were only valuable as they sat there and they could not be moved away?

A Some of the houses were moveable and could be loaded on to a train -- to a carriage.

Q Now, with respect to the foreshore rights, which you are including in your claim for the timber, did you have a lease for the foreshore?

A Yes.

Q Have you a copy of that lease?

A I have nothing. They were all taken away by the Custodian.

THE COMMISSIONER: Well a copy would be available in the Department at Ottawa, would itnot?

MR. McPHERSON: The liquidator or the Custodian have never been able to find a copy of the lease, and I wondered if Mr. Kagetsu had one with him.

Q Do you know how many years the lease had to run? A: It was taken in 1923. You will be able to find the exact date from the E. & N. because it was the land belonging to the E. & N.

Q That is, the foreshore belonged to the E. & N.?

A All that part belongs to the E. & N.--all this side of Union Bay belongs to Union Bay.

Q I am talking of the foreshore lease that is in front of the land?

A Yes.

Q Well did you have the sub-lease from the E. & N. then?

A I don't know if it was sub-leased but anyway they did it direct to me, and I used to pay directly to E. & N.

Q Now with respect to the railroad bed which you were including in your claim for the timber, $4000.00, am I correct that a great deal of this railroad bed was built by putting logs (TIES) on (LOGS), running fore and aft, and then filling in with gravel? Do you understand?

A Some of them were that way.

Q Am I correct that the railway bridges were not suitable for a truck road?

A The truck was very much lighter than the railway so it was easier for the trucks to go over.

Q Well in building this railway and railway bridges, you had taken a reasonable grade, had you?

A A reasonable --?

Q I will change the qestion. What was the average grade of your railway?

A It would average about four and a half but some places were about six.

THE COMMISSIONER: Are we not likely to get farther with a white witness who knows about logging roads than we will with this witness on that?

MR. McPHERSON: Yes, I shall have to take a chance

that my learned friend will call somebody on that. He is claiming for the road bed, and unless I can find out from the claimant what he thinks about the road bed, I am taking a chance on my learned friend calling someone to explain the claim and if he doesn't I shall have to call evidence to show it was not --

THE COMMISSIONER: As far as I am concerned, I don't think we are going to get much help from Mr. Kagetsu.

MR. McPHERSON: Q: Now with respect to your claim for agricultural land, Mr. Kagetsu, just where is the agricultural land that you are claiming?

A Lot 88.

Q And all of the agricultural land that you are claiming is on Lot 88, is it?

A That was the only place -- there were many others places but that was the only place that I thought of which was suitable--most suitable.

THE COMMISSIONER: Well the claim is made then in respect of Lot 88.

MR. BALDWIN: I am not sure. My friend was supplied with a copy the first day -- with the Clement report. It will include the Clement report as to what we consider is the arable land.

MR. McPHERSON: I don't know what help Mr. Clement's report would be in my cross-examination when Mr. Clement does not say where the land is.

I want to examine Mr. Kagetsu as to where this land is.

THE COMMISSIONER: He has said it is Lot 88.

MR. McPHERSON: My learned friend does not necessarily agree with that.

THE COMMISSIONER: Let us put the question then to Mr. Kagetsu.

Q Mr. Kagetsu, is there any other land you are claiming as agricultural land except Lot 88?

A No, I am only claiming for Lot 88.

Q Well that should clear it up.

MR. McPHERSON: When did you finish logging Lot 88?

A I don't quite remember, but I think it was 1941 -- no, 1931.

Q After you finished logging Lot 88, did you pull all the stumps of the big trees?

A I did not take all of them but a great deal of them I removed.

Q Am I correct that you only pulled stumps around the camp site?

A At side of the camp and also I had cleared the place for vegetables around the camp and baseball grounds, and all that.

Q For the baseball grounds around the camp?

A Yes.

THE COMMISSIONER: He cleared the baseball ground and a place to grow vegetables.

MR. McPHERSON: Q: Now is the camp site on Lot 88?

A Yes.

Q And are you claiming the agricultural land as being land adjacent to the camp site?

A The camp is situated right in the middle of Lot 88.

Q Mr. Kagetsu, I show you Exhibit 13. This is Lot 88, isn't it?

A It is 400 acres from here to here about. This belongs to the Fruitland.

Q And where is your land, Lot 88?

A I don't know exactly but I make that mark here -- maybe here and here, too,- just about here. My line is just about the middle.

Q My lord, that clarifies one point. The Lot 88 that the claimant is talking about is not the whole of 88, but just a small portion of 88.

THE COMMISSIONER: On the east side of 88 between the railway, and I suppose by the line drawn through the north junction of Cougar Creek.

MR. McPHERSON: This is where the witness drew the line, my lord (indicating on plan).

Q Mr. Kagetsu, did you have a road into your camp site -- a road in addition to the railway?

A Yes, a great deal of the road had been laid for the trucks to pass.

Q Now what trucks are these that you are talking about? This is a railway location. Did you have logging trucks?

A It was a small truck that I had,--about half a ton or a ton in weight.

Q Was that road open in the wintertime?

A It was open but I very seldom used it. I used

the railway mostly.

MR. McPHERSON: That is all, my lord.

THE COMMISSIONER: Any re-examination?

MR. BALDWIN: Yes, my lord, it won't be long.

RE-DIRECT EXAMINATION BY MR. BALDWIN:

Q Mr. Kagetsu, my friend asked you how you arrived at the valuation of your buildings. How much were those buildings insured for without their contents?

A It was insured for $10,000.00.

Q That is without the contents?

A Yes.

Q How much were the contents insured for?

A I did not insure the contents at all.

MR. BALDWIN: My lord, I have a letter from the Equimalt and Nanaimo Railway signed by a Mr. Barry,-- the same kind of a letter that was produced by my friend today, and I have given him a copy of it. I would like to put in a copy of it as an exhibit. It sets out--

THE COMMISSIONER: That will be Exhibit 20.

(COPY OF LETTER MARKED EXHIBIT NO. 1388-20).

MR. BALDWIN: This letter is to our firm in reply to a request for footage of these various blocks that were sold by the E. & N. to Mr. Kagetsu. You will see on the claim under item 2, this letter --and the one introduced this morning by my learned friend, between them they cover the estimate and cruises of the footage on all the blocks

comprised in the claim.

Q Mr. Kagetsu, in 1931, you shifted your railway, didn't you?

A I moved the whole lot from one side to the other.

Q And do you have, or did you have records of the annual cut over all the blocks that you were working on from the date that you shifted that operation?

A I have a rough copy in here, that is all -- 1931 -- September, 1931, I moved it -- and to March, 1942, I have cut one hundred and twelve million, four hundred and thirty-one.

THE COMMISSIONER: Between 1931 and March, 1942, was it?

MR. BALDWIN: Yes, my lord.

THE WITNESS: March, 1942.

Q And what blocks was that on, or on what blocks was that cut?

A 267.

Q Yes. A: 276.

Q Yes. A: 274.

Q Yes. A: 504.

Q 504, yes. A: 566 and 198.

THE COMMISSIONER: What is the last one?

MR. BALDWIN: 198.

THE WITNESS: And 256.

Q And did you say 566? A: Yes, 566. He says in your record it says 516, but that is a mistake.

Q Yes, that is a typographical error. And your total cut on those blocks was 112,000,431 feet.

A Yes.

Q My lord, I have here a comparison of the E. & N. Cruises and the estimate of timber on the Deep Bay blocks in comparison withwhat was cut. The E. & N. cruises are taken from these letters from the E. & N. and a record of the estimate of the cut is taken from Mr. Kagetsu.

MR. McPHERSON: I would like to know whether this is a paper that Mr. Kagetsu pulled out of his pocket before. I have never seen this before. We were supposed to exchange Exhibits of this kind to give counsel an opportunity to look at the figures.

THE COMMISSIONER: If there is anything that takes you by surprise, Mr. McPherson -- you need not declare yourself at the moment, Mr. Kagetsu can be recalled for further cross-examination.

MR. McPHERSON: There is a reference on here of a Mr. Stotsky. They are not Mr. Kagetsu's figures, and I would have to object to it going in unless they called Mr. Stotsky.

MR. BALDWIN: This exhibit only arises out of my friend's cross-examination this morning. This was prepared at noon and it is prepared to show the obvious difference between the E. & N. cruises and the actual cut. I think Mr. Kagetsu can explain it.

THE COMMISSIONER: Well, go ahead and get the explanation, and see what he says.

MR. BALDWIN: Q: Did you log Block 256 entirely by yourself, Mr. Kagetsu?

A I cut the upper part of it but the lower part was cut by Mr. Stotsky.

Q How much did you take off?

A I took off about five million.

Q And how much did Mr. Stotsky take off?

A He took it together with 195 with 198.

Q How much did Stotsky take off 256?

MR. McPHERSON: Isn't this hearsay, my lord? How does Mr. Kagetsu know what Mr. Stotsky took off?

THE COMMISSIONER: Well no doubt he had to pay for it.

THE WITNESS: He took eleven million from both -- from the two together.

MR. BALDWIN: Q: How do you know those figures are correct? Mr. Kagetsu?

A The scale bill and also the stumpage. He says I got the bill.

Q Stotsky was paying you on the basis of the scale, was he?

A Yes.

Q I will file that.

MR. McPHERSON: My lord, I wonder if my learned friend is going to call Mr. Stotsky about this.

MR. BALDWIN: No, I do not propose to call Stotsky.

THE COMMISSIONER: It would certainly strengthen your position. Kagetsu, as I understand it,

is not verifying the fact that these quantities were taken by Stotsky. Hasn't he said that Stotsky paid him stumpage on that much timber? Is that right?

MR. BALDWIN: That iscorrect.

THE COMMISSIONER: Is that not the effect of this evidence?

MR. BALDWIN: Yes.

THE COMMISSIONER: It is unlikely that Stotsky would pay for something he did not take off. I make no direction. If you are content to rest on the evidence as it is, and Mr. McPherson will have a further opportunity to cross-examine the claimant, -- and he need not do so until he has examined this document.

MR. BALDWIN: Q: Mr. Kagetsu, what was the percentage of the shares that you yourself held in the Deep Bay Logging Company?

MR. McPHERSON: I am not questioning Mr. Kagetsu's right to make a claim.

THE COMMISSIONER: I thought that was clear.

MR. BALDWIN: I was just producing that to show he was the majority shareholder.

THE COMMISSIONER: That is conceded.

MR. BALDWIN: Then it is unnecessary for him to answer that.

Q Mr. Kagetsu, would you have sold your felled and bucked timber, or your stumpage, which you owned personally, to someone other than the Deep Bay Logging Company Limited for $5.00?

A You mean standing timber?

Q No. A: You man felled timber?

Q I will clarify this. You told my learned friend that the Deep Bay Logging Company bought from you felled and bucked timber at $5.00 a thousand. Now tell him that.

A The last estimate on the new sheet was only an estimate of the stock that I held at the end of the year--the inventory that was taken of the stock.

Q I will put it this way. Would you sell the stumpage or the felled and bucked timber to anyone other than the Deep Bay Logging Company Limited for the price that you did sell to the Deep Bay Company?

A No, I don't wish to sell it to any other company than Deep Bay.

MR. McPHERSON: May I ask my learned friend if there is any evidence that Mr. Kagetsu did own Block 274 where the felled and bucked timber was. I thought the evidence was it was on 274, but I don't know that they have established that he owned 274 personally.

THE COMMISSIONER: The evidence we have is that credit was given in the company's books to Kagetsu personally for certain felled and bucked timber. Is that not correct?

MR. McPHERSON: My learnéd friend is talking of the falling and bucking of timber generally,

but not the felled and bucked timber in the claim, is that correct?

MR. BALDWIN: Yes, what I am attempting to show is that this is not a true estimate.

Q Do you know, Mr. Kagetsu, whether gang saws were in very general use in 1942?

A No.

THE COMMISSIONER: What does he mean? He does not know, or they were not in general use?

THE WITNESS: He never used it. He only brought it to Vancouver, and then a man, Simpson, bought it.

Q Ask him this: Do you know whether gang saws were in use in the mills which you sold in 1942?

MR. McPHERSON: I heard the interpreter say 1943, my lord.

THE COMMISSIONER: Mrs. Smith, let us be sure of those dates. The last timber that the witness sold was in 1941. Am I right in that?

MR. BALDWIN: Yes.

THE COMMISSIONER: Did the Deep Bay sell any timber in 1941?

MR. McPHERSON: Up to 1942.

THE COMMISSIONER: We are close to the dividing line, according to the information I have had up to date.

MR. BALDWIN: Q: Do you know whether or not, Mr. Kagetsu, gang saws were in use in the Province of British Columbia, in the Vancouver district in March, 1942?

A I think so, yes. It was used.

MR. McPHERSON: My lord, it is my recollection in answer to my question this morning the witness said he did not know.

MR. BALDWIN: He did not know how many.

THE COMMISSIONER: I think the way the question was put this morning was were they in general use and he said he did not know.

MR. BROWIN: My friend was even more specific. He asked how many would be used, and then he asked the question I would have been very surprised if he had been able to answer that question.

THE COMMISSIONER: Well, I don't know that we have had very much help from Mr. Kagetsu in either instance. Have you any more questions, Mr. Baldwin?

MR. BALDWIN: Just one more question, my lord.

Q Did you know whether or not your solicitor, Mr. Stewart, was in contact with the Custodian?

A I think yes, I do.

Q How do you know?

THE COMMISSIONER: Mr. McPherson, is there any question about it?

MR. McPHERSON: No, my lord.

THE COMMISSIONER: In fact, Stewart was with the Custodian frequently. Is that not a fair statement?

MR. McPHERSON: Yes, but I think the point of my learned friend's question is whether Kagetsu knew it or not-- that Stewart was in touch

with the Custodian.

MR. BALDWIN: No --

MR. McPHERSON: The Custodian does not deny it at all. The Custodian was in touch with Mr. Stewart up to the time that Mr. Kagetsu left.

THE COMMISSIONER: Does that furnish the information you want?

MR. BALDWIN: Partly.

Q What was his answer?

A He says Mr. Stewart came to Minto and advised him to sell, and that he, the Custodian, was pressing him -- putting a great pressure on the sale of it.

THE COMMISSIONER: That is hardly responsive to your question, but, still, that is his answer.

THE WITNESS: I should say the Custodian telephoned to him while they were talking and he went out to telephone. It was outside at the store, and I don't know what the telephone message was, but when he came back he said it was certain that he had to sell it.

MR. BALDWIN: That is all, thank you.

(Witness aside)

MR. McPHERSON: My lord, before your Lordship adjourns, I wonder if I am going to have an opportunity of cross-examining on this statement. I think it is only fair that I should be given a breakdown of how the 96 million feet is arrived at because that is the total. My learned friend has indicated that this is going to show an over-run, and

I am just bringing it to your Lordship's attention that where they do show an overrun it is only eight thousand over the cruise and in the next one, 198, where they give a breakdown it is less than a million over the cruise and is stated to be an estimate only, so the over-run must be in the neighbourhood of one million, and if Mr. Kagetsu can give us that from his little book, he should be able to tell us in which block it is and that is the only basis on which I can find out where the over-run occurs.

MR. BALDWIN: We are quite prepared to do that. We can give the information on all blocks.

THE COMMISSIONER: You can speak to it again, and I take it that Mr. Kagetsu will be remaining here for the balance of the hearing and he will be available for further cross-examination, if required.

MR. BALDWIN: On this point, yes.

THE COMMISSIONER: Yes, just on this point. Anything further?

MR. McPHERSON: Well when you say just on this point, I assume I have the right to recall Mr. Kagetsu, and ask him what did Mr. Stotsky pay him for the timber that he cut at that rate of stumpage.

THE COMMISSIONER: Well if you are going to cross-examine on that statement, why not hold the entire cross-examination over until later?

We are getting along pretty well now into the afternoon. It is a quarter to five, and we will adjourn now until 10 in the morning.

(PROCEEDINGS ADJOURNED TO 10:00 A.M., NOV. 18/48).

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

E Blygh
Deputy Official Stenographer

J. G. Harris, K.C.

JAPANESE PROPERTY CLAIMS COMMISSION

B E F O R E

(THE HONOURABLE MR. JUSTICE H. I. BIRD, COMMISSIONER)

Vancouver, B.C.

November 18, 1948.

IN THE MATTER OF THE CLAIM OF

THE DEEP BAY LOGGING COMPANY

(CASE NO. 1388)

(Pages 249 to 355)

COPy.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

Vancouver, B. C.

November 18th, 1948 , 10.00 A.M.

MR. BALDWIN: I was directed by your lordship to supply my learned friend with the break-down of the figure of the cut.

THE COMMISSIONER: Do you want to go on with Mr. Kagetsu this morning?

MR. McPHERSON: No, I will reserve that until I have a chance to consider.

THE COMMISSIONER: Then who is your next witness, Mr. Baldwin?

MR. BALDWIN: Mr. William Byers.

WILLIAM BYERS, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BALDWIN:

Q Where do you live, Mr. Byers?

A 4055 West 12th.

Q What is your occupation?

A I am a consulting forester and timber broker.

Q What societies are you a member of in your occupation?

A I am a member of the registered foresters of British Columbia, the Canadian Society of Forest Engineers, the Empire Forestry Association and for several years, from 1933 to 1946 inclusive, I was lecturing on forestry in the University of British Columbia.

Q What was your prior experience in your occupation?

A I was for 29 years with the B.C.Forest Service, prior

to entering into my present business; first in the capacity of assistant forest ranger, then ranger, forest supervisor, and finally supervisor of scalers.

Q As Forest ranger, Mr. Byers, what would your duties be? A. We had general supervision over logging operations which involved timber cruising, forest protection, land classification, fire prevention, scaling, numerous other duties.

Q I am afraid I didn't hear the last?

A Log scaling.

Q Where did you carry out those duties; in British Columbia? A. Yes, on the Coast of British Columbia. The first seven years I spent on Vancouver Island and five of those years I spent on the east coast of Vancouver Island in the vicinity of Rock Bay, Campbell River, Comox, Nanaimo, Duncan, Victoria, Cowichan Lake and other places.

Q What would you say as to the general nature of the timber stands on the east coast of Vancouver Island?

A I would say that the stands on the east coast of Vancouver Island are superior to most stands in the coastal area.

Q What reason would you give for that opinion?

A Due largely to their accessibility to the water, good topographical conditions for logging, sheltered booming facilities, short towing distances to market and safe -- comparative safe towing, being mostly in sheltered waters. In many cases where long tows are involved they are subject to exposed waters and

the losses can be very great.

Q Now there is a difference in the value of different species of timber, is there not?

A Yes, there is. Fir is generally considered to be one of the most desirable to have. It not always the case, but it is the high priced timber. Spruce during the war was a higher price than fir. Cedar is next, and hemlock and balsam and other minor species.

Q How does the percentage of fir in the stands on the east coast of Vancouver Island compare with the percentage on stands in other parts of British Columbia?

THE COMMISSIONER: Would it not be as well to bring it down to the E. & N. lands with which we are concerned.

MR. BALDWIN: Very well.

THE COMMISSIONER: Inasmuch as you have some purpose in dealing with it in general terms.

MR. BALDWIN: Q; In the course of your duties as forest ranger, Mr. Byers with the government and on the East coast of Vancouver Island, did you become familiar with the area in the neighborhood of Deep Bay with which we are concerned in this Commission, those blocks -- the Fanny Bay operation?

A Yes, I was quite familiar with them.

Q What do you say as to the general nature of those limits? A. They were very good stands of timber, easily accessible with a high percentage of fir.

Q I show you a ledger sheet, Mr. Byers. It looks like a ledger sheet -- will you tell the Commissioner what this is? A. That is a summary of the logs that were scaled officially by the B. C. Forest service, taken from the areas in question.

Q Which areas in question?

A I cannot remember the block numbers offhand. I would have to refer to the block numbers.

Q What timber was it?

A Those blocks were covered by timber mark 2-K-9 Crescent.

Q That is the mark of the Deep Bay area?

A That timber mark was applied for by Alpine Timber Company in whose name it was registered and those logs were logged by the Sable River Logging Company for Alpine Timber Company.

MR. BALDWIN: Might I have Exhibit 2, Mr. Secretary.

Q Where did you obtain this information, Mr. Byers?

A From the records of the B.C.Forest Service in the Forest Service Office in Vancouver.

Q Mr. Byers, I show you Exhibit 2, at this hearing. Do you recognize it. A. Those are the areas which are covered by this timber mark.

Q Are there any other areas covered by this timber mark? A. No.

MR. McPHERSON: Will you just have the areas identified as to the exact blocks covered by the timber because there are other areas there that belong to Deep Bay.

THE WITNESS: May I look at my notes.

MR.BALDWIN: Certainly.

THE WITNESS: Timber mark 2-9-K Crescent--

THE COMMISSIONER: What is that mark ?

A 2-K-9 Crescent covers blocks 198, 234, 256, 263, 267, 274,276, 504,566 and 617. Also that part of lot 88 Newcastle district which lies east of the western boundary of Lot 48 extended south to the north boundary of 198 except plan 293 right-of-way.

MR. BALDWIN: Q; On Exhibit 2, Mr. Byers, there are marked certain areas with dotted lines around them. (indicating) -- 48 for example, 46, 39. Will you tell the Commissioner what those marks mean?

A Those marks indicate the years in which those areas were logged.

THE COMMISSIONER: Does it indicate where it is marked. I have not a copy of that.

MR. BALDWIN: Yes, my lord.

THE COMMISSIONER: Have you another copy.

MR. BALDWIN: I have one here.

Q Mr. Byers, perhaps you can stand up here. Here in block 504 there is in the northern portion there a slight overlap of block 263 roughly rectangular marked F and B, 1948. That stands for felled and bucked? A. That indicates timber which was felled and bucked during the year 1948.

Q Then if you follow down to the south-east there, through that area, you find another irregularly shaped area in which appear three circles each horizontally divided/marked 48. What is that

What does that area represent?

A Those circles with the bar in the centre indicate the year in which that particular area was logged.

Q And the outline shows the area which was logged?

A Yes.

Q The dotted line? A. That is right.

MR. McPHERSON: My lord, may I ask if the witness prepared this map which was filed as an exhibit, or is somebody going to prove it is a correct map.

MR. BALDWIN: Q; Will you tell the Commissioner.

A This map is taken from the official records of the B.C.Forest Service, my lord.

THE COMMISSIONER: Q; It is a copy?

A It is a copy of the area, of their operating map which they had in their office.

Q MR. BALDWIN: Further down in 504 carrying into the south-east there is another marked 46?

A That indicates that area was logged in 1946.

Q Now are there any areas other than those that are indicated on this Exhibit 2, as having been logged in the way you have described. Are there any other areas which have been logged under 2-K-9 Crescent?

A Not to my knowledge, not according to the records of the Forest Servic e.

Q Not according to the records of the Forest Service?

A No.

MR. BLADWIN: My learned friend was supplied with this last exhibit, my lord, sometime ago.

THE COMMISSIONER: Yes.

MR. BALDWIN: We have also the October scale for the same

area which we have just received and which I have given him a copy of.

THE COMMISSIONER: Q; October of the current year?

MR. BLADWIN: Yes, my lord.

Q Will you tell his lordship the dates between which-- the dates covered by this last exhibit?

A This timber mark was issued I believe on March 26th -- no, pardon me. This timber mark was issued before that date, but the first logging under this timber mark occurred in 1946 with the exception of 2,349 Christmas trees which were removed from this area in 1945. The remainder of the timber shows that this sheet was logged between March 1946 and September 1948.

THE COMMISSIONER: I see one circle with a 40 above it and a 39 to the right -- that is to the right of 274.

A That my lord was logged under another timber mark. That indicates that area was logged in 1939 and slashed burned in 1940.

MR. BALDWIN: I would like to put this in my lord, as an exhibit, this October scale.

THE COMMISSIONER: Make it one exhibit.

THE SECRETARY: Exhibit 22.

THE COMMISSIONER: Wait a minute, what is 21? Is that the memo showing the E. & N. cruises?

THE SECRETARY: Yes, E. & N. cruise and estimates of timber. Exhibit 22.

(OCTOBER SCALE SHEETS MARKED EXHIBIT 1388/22)

THE COMMISSIONER: I take it the evidence you are now

adducing is particularly relating to Exhibit -- what is this document?

MR. BALDWIN: Exhibit 2, I think, my lord.

THE COMMISSIONER: Exhibit 2 -- is adduced to support your evidence as to the timber contents of these various blocks.

MR. BALDWIN: Ye, my lord.

THE COMMISSIONER: By showing that so much was cut.

MR. BALDWIN: So much was cut and so much remains by our cruise.

THE COMMISSIONER: I see.

MR. BALDWIN: Q; What is the second part of Exhibit 22, this small sheet? A. That is the official log scale for the month of October which was not available when I extracted the figures -- the previous figures.

Q This exhibit shows the break down by species, doesn't it? A. By species and grades.

Q Would you read in the first half of it what your species percentage is?

A The percentage of fir was 49.71 percent.

THE COMMISSIONER: Where do you find that?

A At the bottom of the sheet, my lord.

THE COMMISSIONER: I see it.

THE WITNESS: 49.71 percent and the cedar was 24.39, the hemlock was 16.34 percent, the balsam 7.94 percent; the spruce was .013 percent; the cottonwood was .003 percent, the cyppess was .090 percent, the white pine was 1006 percent.

Q And in the species themselves, would you just read

the grades of one and two -- the percentage of grades?

A The percentage of grades in fir was No. 1, 9.47%. Grade No. 2 was 63.63%, and grade No. 3 was 26.90%. Cedar was 5.76 %, No. 1 grade. No. 2 was 49.54%, No. 3 grade was 44.70%. Hemlock No. 1 grade was 4.59%. No. 2 grade was 35.82%. No. 3 grade 60.13%.

MR. BALDWIN: Q: Well those percentages are very low, I don't think you need bother.

A No, the remainder of the species are minor quantities, and we only have total percentages of those. The grades in fir were very much about the average. The grades in cedar were about average and Hemlock was also about average. But the fir was of a superior quality.

THE COMMISSIONER: Q; You say that fir does not normally run as high in No. 2 as this timber does?

A Well my lord, the average for the last ten years I believe is somewhere around 5% No. 1 of fir, and about 40% No. 3.

MR. BALDWIN: Q; Will you tell the Commissioner how you know that, Mr. Byers?

A I know that from figures that I took from the 1947 annual report of the B.C.Forest Service.

Q What would you say as to the percentages of the species shown in this October scale, the second half of Exhibit 22. A. Comparing it with the previous figures which I have just read it would look as if the grade of fir was improving very considerably. The percentage of fir there is No. 1, 16.76%; No. 2 62.1 %, No 3 is down to

21.10%.

Q What is the value of cypress relative to fir -- compared with fir? A. It is considerably higher. It runs around $12.00, $10.00 to $12.00 perthousand higher for the No. 1 and 2 grades. That is in the log.

Q That is in the log, I suppose?

A Yes, in the log.

Q Will you just tell the Commissioner the percentages of species, the grades percentages, the totals of that? A. Fir for the month of October, 1948, amounted to 66.55%. Cedar was almost nil. It was .009% of cedar. Hemlock was 13.39%, Balsam was 3.82%, Spruce .17%. Cypress was 14.3%. White Pine was 1.32%.

THE COMMISSIONER: Excuse me. Is there means of ascertaining what percentage of this timber was cut from areas other than the areas which were the property of the Deep Bay Company of Kagetsu.

MR. BALDWIN: My lord, none of it was cut from the other blocks.

THE COMMISSIONER: I understood from a remark made by counsel there was some part of it, that this 2-K-9 Crescent also included some other blocks of timber that belonged to the claimants. Am I wrong in that?

THE WITNESS: My lord, the records of the timber mark book shows that mark was only issued to cover those particular areas.

THE COMMISSIONER: Then I misunderstood.

MR. McPHERSON: I don't think you really misunderstood the evidence. Mr. Byers has not said that was covering only this timber. All he says is, it was issued for this timber, but that is not evidence. There was no timber cut under that same mark.

THE COMMISSIONER: Perhaps Mr. Byers can help me with that. Is there any possibility that the mark 2-K-9 Crescent could have been cut on areas other than the areas for which the mark was issued?

A I don't think so, my lord. If that timber mark was used on any other areas, then it was improperly used, and I do not think that would happen. It could, but those operations are under constant inspection and supervision by the rangers whose business it is to see that they are keeping their operation on the areas indicated by the timber marks.

Q Obviously if it had been used on other timber it was used in contravention of the provisions of the Forest Act? A. Quite so, my lord.

Q That must follow, must it not?

A Yes, my lord.

THE COMMISSIONER: All right.

MR. BALDWIN: Q: Mr. Byers, did you extract from the records of the Forest Service, similar information with regard to any other timber mark?

A Yes, I supervised compiling the information from block 95, Cowichan District.

Q Block -- A. 195.

Q Did that timber mark cover 195 alone?

A No, it covered 195 and part of block 403. That is

timber mark 1-C-6 Crescent.

MR. BALDWIN: My learned friend has supplied me with a copy of this, my lord, which I propose to put in.

THE COMMISSIONER: Better have it marked now, then we can refer to it as Exhibit 23.

(EXTRACT FROM FOREST SERVICE MARKED EXHIBIT No. 1388/23)

MR. BALDWIN:Q: Is Exhibit 23 a copy of the figures you extracted with regard to timber mark 1-C-6 Crescent?

A Yes.

Q Will you tell his lordship.how we are interested so much in the amounts?

A In this case, my lord, it covers more than a block.

Q My question is what does it indicate. Will you tell his lordship what the figures you have extracted indicate as to the species, the percentage of species and the percentage of grades in this general area?

A The total percentage is fir in the area covered by timber mark 1-C-6 Crescent, was No. 1 fir 11.53%; No. 2 fir, 62.89%; No. 3 fir, 25.48%, a total of 36.94% of the total cut, the total species. Cedar -- No. 1 cedar, -- No. 1 grade cedar was 7.23%, No. 2 grade cedar was 51.55%, No. 3 grade cedar was 41.22%. The total percentage of cedar in that stand was 13.02. The percentage of hemlock logs, No. 1 grade, 2.38%; No. 2 grade 13.11% ; No. 3, 44.22%. I might state there, my lord, that hemlock was not graded previous to the middle of 1947 and there was an ungraded percentage there of 49.2%. The total percentage of hemlock, including both graded and

ungraded was 28.57%. Balsam was 18.43%. Cypress No.1, was 9.43%. No. 2 grade Cypress was 40.48%. No. 3 grade Cypress was 55.09%. The total percentage of the stand 1.57.

THE COMMISSIONER:

Q That is 1.57% of the whole?

A Of the whole, yes. Cottonwood there was no No. 1 grade. The No. 2 grade was 48.44, the No. 3 grade was 51.56%, the total percentage of .01%.

Q Have you any means of determining what percentage of this timber was cut from 403 and what percentage from 195 ? A. We have a rough --

Q I appreciate it must be rough.

A A rough estimate my lord, by computing the acreage logged on the two areas and dividing that into the body which was cut, which in my opinion does not give a very fair estimate of the amount in the cut from block 195, because the topographical map shows that the area block 403 was high and it ran heavy to hemlock and balsam and not so much fir.

MR. BALDWIN: My lord, Exhibit 1, is the plan of the operations of the Stolz Lumber Company (?) and under timber mark 1-C-6 Crescent. It shows the areas with respect to which this is the scale and the cut. 195 has been largely logged off?

A Yes, except down in the southeast corner and a certain amount in felled and bucked.

THE COMMISSIONER: What were your percentages, the rough percentage as between 403 and 195?

A I am afraid, my lord, I don't quite remember. I

remember making them but I didn't make a record of them. I think if I remember rightly there was something between 500 and 600 acres logged of 403 and the balance there was on 195 and I don't remember what the figures were on 195, but they were larger than the figures on 403.

MR. BALDWIN: Your lordship will recall at the outset of the case Mr. Norris indicated that we were handling this only for the ~~outlying~~ outlining of the block. We were not agreeing to the accuracy of these lines which purport to indicate the line of the cut

THE COMMISSIONER: You see, with no information whatever, Mr. Baldwin, as to what percentage was taken from each block, even the evidence you are now adducing as to grade cannot be very helpful.

MR. BALDWIN: It is of some help, my lord.

THE COMMISSIONER: Suppose 90% was taken from 403, it would not mean anything in terms of this claim .

MR. BALDWIN: Yes, my lord, but as your lordship can see roughly the area taken from the amount shown here by the plan to be cut from 195 is if anything, greater than the other.

MR. McPHERSON: My lord, is my learned friend now admitting that the lines on that plan are now correct because if he is going to use it he must admit it as Mr. Norris admitted it. If he is going to use those lines till --

THE COMMISSIONER: I don't see 403, where are the boundaries of 403?

MR. BALDWIN: Perhaps I can assist your lordship.

THE COMMISSIONER: Is this 403 running down here?

MR. BALDWIN: No, that is another block altogether.

THE COMMISSIONER: There is nothing here to show the amount he cut on 403.

MR. BALDWIN: Up here. If my learned friend objects to that --

THE COMMISSIONER: It is not a question of your learned friend's objection. I want to know how much weight can be attached to this evidence, even as to grade. It appears to me, subject to what you have to say, you cannot attach very much to the evidence in view of the fact we do not know how much of it was taken from 403 and how much from 195.

MR. BALDWIN: No, my lord, but the timber that was taken in this area was uniform, it was not a case that it might have been of pieces here and there where the uniformity of the stand might differ very much. It is all taken from one thing and it is just tendered for what it is worth as to the percentage of grades, the species and the grades in that area.

THE COMMISSIONER: I hoped that Mr. Byers might be able to say roughly what percentage of this timber shown in 23 was taken from 405. If that had been so, I would have been able to evaluate the evidence, but as he cannot help me at all in that regard I do not see how I can place very much weight on it.

MR. BALDWIN: All right, my lord. We will adduce it in another fashion.

THE COMMISSIONER: Don't let me stop you leading this evidence;if you can get any information as to the approximate percentages between the two blocks, it will be helpful to me. That is all I am trying to indicate to you.

MR. BALDWIN: I think my lord, we will not seek to prove it in this manner. We will proving this through our cruise which is already in for identificationQ. It has not been proved yet, as the cruiser is out on other limits.

THE COMMISSIONER: V ery well.

MR. BALDWIN:Q: In any event, Mr. Byers, what do you say as to the percentages shown in this Exhibit 23 of fir and -- A. Well, I am familiar with the areas in the Cowichan Valley and adjacent country but I never to my knowledge was on Block 195 or 403 but my general knowledge is that the timber there is very uniform, fairly uniform, and that the percentages here would be a pretty fair indication of what was taken off Block 195 and also from block 403; I don't think they would be-- that is in the grading situation -- I don't think there would be a great variation.

THE COMMISSIONER: Q: As between the timber on 403 and 195, they are comparatively uniform?

A That is the grading situation with the exception that 403 in my opinion from the records I have seen runs heavier to hemlock than 195.

MR. BALDWIN:Q: What do you say as to the percentage of fir? A. Well, it is about average, considerably above average. A very desirable type of timber I

would say. ~~xx~~ ~~x~~

Q Go ahead? A. As I mentioned before the average for the past ten years for No. 1 is approximately 5% with 40% No. 3. Here we have 11.53% No. 1 and only 25.48% No 3.

Q Mr. Byers, you mentioned earlier that you were familiar, or that you knew the general grades percentage of Grades 1, 2, 3 throughout the province and took it from the 1947 report of the Forest Service?

A That is so.

Q Did you make a memorandum from that?

A Yes, I did.

Q Do you have it with you. We will put in that report. I don't have the 1947 report from which Mr. Byers took these figures. I thought it would be just as well to put in his evidence now.

A I am sorry, I don't appear to have that record with me.

Q No matter. Now in the course of your duties as supervisor of scalers, Mr. Byers, did you have any occasion, or was it necessary for you to know anything about log prices? A. Yes, it was part of my duty to get in touch with log prices because we had to use them frequently in settling values of log booms and settling rescales and so on.

Q What was the trend at the time that you were employed, will you say, from 1930 on?

A Well, during the 1930's up to 1936 it was of depression and logs were a very low pr time, but in the latter half 935 the

indication of improvement and in '36 it was very definite and there has been no retrogression in the logging prices since that time. Prices have continued to increase from 1936 until today when they are at the highest that we have ever known int he history of logging in British Columbia.

Q In the course of your duties with the government and the Forest Service, did you have any occasion or was it part of your duties to assess the efficiency of various logging operations?

A Yes, during my term as forest ranger and forest supervisor it was part of my duty to see that logging operations were carried on efficiently without any undue waste, and to see that various protection regulations were carried out and as far as possible to prevent forest fires.

Q To prevent? A. Forest fires and waste of any kind in the woods.

Q Are you familiar with the Deep Bay operation of the Deep Bay Logging Company Limited?

A Yes, I am.

Q What do you say as to the manner of operation at Deep Bay? A. In my opinion it was very efficiently managed and as far as Forest protection and utilization was concerned it was as good as any others.

Q Would you say it was superior to some that you had seen?

THE COMMISSIONER: Am I concerned with that feature of the operation?

MR. BALDWIN: I think your lordship is, because it will later be argued that the fair market value of the thing is the thing as a going concern; the whole operations that have been sold that way and if it is an efficient operation it goes to the matter of its value.

THE COMMISSIONER: All right.

THE WITNESS: Will you repeat that question again, please?

THE COMMISSIONER: Well, the suggestion in the question was, compare the efficiency of this operation with others from the point of view of determining whether it was a more efficient operation than others?

A Well I would not say that it was more efficient. There were other operators that were more efficient than the Deep Bay Company.

Q But above average? A. It was what we consider one of the better managed operations.

Q What would you say about the utilization of timber by the Deep Bay Company?

A As far as my recollection goes they were doing a very good job with utilization. We never had occasion to discuss the matter with them because our own experience taught us they were taking everything which there was a possible chance of getting a market for.

MR. BALDWIN:

Q What would you say as to utilization in the past, Mr. Byers, say in the twenties?

A Well, there is no doubt that utilization has improved vastly over utizilation in the twenties, but that improvement began a good many years ago.

The Forest Service to my knowledge has carried on a campaign of better utilization for the past 30 years. Finally public opinion got behind the efforts of the Forest Service of having better utilization, and other factors tended to impress this matter on every one, logging operators and everybody else with the result that when the war came along operators were cutting more timber and in fact were utilizing timber of a very low grade which I question very much would have been logged even today if it had not been for the demands imposed on the industry by war conditions. The through the insistence of the Minister of Lands and and the Forest Service particularly, the Sloan Commission was brought about and Ii think it served to intensify utiIzation more than anything else .

Q Be a little more specific, Mr. Byers, what would you say was good utilization in 1942, to what diameter? A. Well, take on your larger operations, the larger logging operations they were cutting their stumps a great deal lower than they had been previously and they were taking out smaller timber which in many cases was down to 12 inches D.B.H. then on many of the smaller operations they were taking it much lower than that. Some of the small mills who were logging on the Coast here were taking anything they could cut a two by four out of, the demand for lumber was so great.

THE COMMISSIONER: When did that change occur, Mr. Byers?

A Well, my lord, I think that in 1938 when it was obvious that there was a second world war about to start a very heavy demand for lumber from British Columbia was created, and in the fall of '38 the sawmills had to shut down for lack of logs, and with the unprecedented demand for logs, anybody who could get a horse or a donkey engine, or a donkey tractor that would haul logs going to work and they got any kind of lumber which they could get hold of.

Q I do not want a long description of the conditions. I asked you about what time this change took place. I have had evidence before me from responsible men that logs 12 inches at the butt became marketable in the period 1942 to 1944, for the first time. Do you agree with that?

A No, my lord, I do not.

Q When did the change occur then?

A I would say that the change occurred around '35 and '36. They were taking out logs of that diameter. And I think that can be proved the scale and by the tally sheets and the royalty accounts on which you will see there logs taken down of 8, 9 and 10 inches in diameter.

MR. BALDWIN:Q: Is it good logging practice, Mr. Byers, to log down to that diameter I described, 10 inches, D.B.H.? A. Yes, I would say it is good logging practice to utilize as much as can of the stand of timber that is there, because

if you don't take out the smaller stuff when taking out the big stuff it will either get broken by logging operations or it will be blown down by wind storms or it will probably be burned up by fire. And the practice in years gone by when they really began to get alarmed about the supply of timber in British Columbia, was to try to relog some of the logged off areas but they found that to be too expensive, after carrying out very large experiments and the tendency today is, or the practice today is, the log that timber with the big stuff and take all that they can possibly get.

THE COMMISSIONER: Q: This change that you refer to, you say, took place early in 1936?

A That is my opinion, my lord.

MR. BALDWIN: Q; You are familiar with the Swedish gang saw, Mr. Byers?

A Yes, I have seen several operating in the province.

Q What was the first one you ever saw operating in the province or knew of?

A Well, if I remember correctly the first one was installed by Hillcrest Lumber Company near Duncan.

Q What year was that?

A Well, my memory does not serve me well enough exactly, but it seems to me that it was in 1928, but if it was not in 1928 it certainly was in the early thirties.

Q Do you know how many there are operating in the province now? A. Well, I made an effort to find out. I know from my personal knowledge of

several mills that are operating , and as far as my investigations went, I could only find six operating at the present time out of a total of over 1600 sawmills in the Province of British Columbia, and one of these was not a Swedish gangsaw, it was a W icks gangsaw, but nevertheless it was a round-logged gang, which is practically the same thing.

Q What is present day utilization, down to what diameter D.B.H.? A. They are taking it down for various purpose to 10 and 12 inches D.B.H. for posts, piling and even saw timber.

Q There are other methods of sawing those small logs other than by those Swedish gangsaws?

A Oh yes, small logs have been sawn in British Columbia for 30 or 40 years to my knowledge. Many of the large mills in the province before the Swedish saw was brought into this country and even today are operating what they call the pony rig. The Canadian Western Lumber Company, Thurston & Flayelle have a pony saw as well as a main headsaw. The logs go up the jack ladder and the smaller size go to the one saw and the big logs to the other. And they are just as efficient as the Swedish gangs. They have a double way of sawing; that is when the carriage goes along one way the saw saws off a board and when the saw comes back it saws off a board. There is no waste motion. This is found very satisfactory, then in the small mills cutting anything from three to 15,000 feet per day they

are working on very small timber on this coast.

Q In any stand of timber, I suppose some of it has fallen? A. Oh yes, there is generally some blowdown or trees that have become over mature and fallen over or somethinf of that kind.

Q What disposition does the Forest Branch recommend for fallen timber?

A Well, they expect the operator will take it out if it is sound.

Q What fallen timber would not be sound?

A Timber that was broken in falling or timber that had rotted during the time it had been lying on the ground.

Q What percentage of fallen is unsound through having broken in its fall?

THE COMMISSIONER: Q: It would depend on the species?

A Very little, my lord. As a rule when those trees fall they are generally in a thick stand of timber and the fall is eased down by the limbs of the other trees. The breakage is very small.

MR. BALDWIN: Q: What about rot with this fallen timber. Does it vary? A. It varies in species, in different species. Cedar of course, has more resistance. It practically lasts indefinitely, fir will remain good, remain without deterioration up to three years, and in some cases over that time. Hemlock and balsam will remain good for two years, sometimes longer, especially if they are in the northern aspect where the sun

does not get them. If they remain continually damp they will stay sound much longer.

Q In the preparation of this case you had occasion to make certain extracts from timber sales contracts, is that a copy of the extract you made?

THE COMMISSIONER: Does this relate to this timber. Do those figures relate to the timber with which we are concerned.

MR. BALDWIN: No, my lord. They are timber sale contracts by the government. This evidence has relevance on the stumpage value.

THE WITNESS: Yes, I extracted this from the records of the Forest Service.

MR. BALDWIN: I will file that, Exhibit 24.

(SALE CONTRACTS EXTRACTED MARKED EXHIBIT No.1388/24)

MR. McPHERSON: Has my learned friend got the original file from which this information was taken. Has he brought them into court.

MR. BALDWIN: No, you have them.

MR. McPHERSON: I gave them back to my learned friend. I might suggest that my learned friend has the originals here for the purpose of cross examination on this document.

MR. BALDWIN: Very well, my lord, I will get them. The original records from the Forest Branch were taken out and we had them and prepared this abstract. I gave them to my learned friend and he has just returned them apparently. I will produce them for cross examination.

Q Now will you look at that, Mr. Byers, and indicate to the Commissioner which of those contracts we have listed would more closely approximate the value the timber limit at Deep Bay and block 198.

THE COMMISSIONER: Just a moment. Are we not concerned more with approximating the species and type of timber rather than the value? Or is that what you mean by your utterance today?

MR. BALDWIN: No, the price, my lord. The price at which those various small parcels were sold.

THE COMMISSIONER: Yes, but supposing they were a wholly different price of timber to that with which we are concerned. If they were wholly different, then the comparison would not be worth anything.

MR. BALDWIN: Not if the thing was wholly different.

THE COMMISSIONER: That is why I put the question to you. Should you not be making your comparison with something that is comparable in type of timber, condition of ground and so forth.

MR. BALDWIN: Well, my lord, it is merely a matter of mathematics. For example if we take a stand that was wholly hemlock and find that it was $2.50 stumpage that was paid to the government for that, them we can assume that had the stand been fir it would have been a good deal more, because hemlock is a cheaper grade. This is just an over-all picture of stumpage prices.

THE COMMISSIONER: I do not see how the comparison of values is going to be very helpful. Go ahead.

THE WITNESS: Well, my lord, all those timber sales which

have been extracted from the record, are in my opinion, of a similar nature the stands of timber on Vancouver Island. The species is much the same and the topography and the logging condition are much the same, but I do not think that the stumpage prices shown on those records is a fair sample of that the stumpage prices were at that particular time.

MR. BALDWIN: Q; What do you mean by fair?

A Well I don't think they are as high as the stumpage prices which were generally obtained at that time for private timber, for the simple reason that the majority of those sales were small areas adjacent to current logging operations, which were of no value to the operator of that particular area .

THE COMMISSIONER: Q; Therefore there would be no competition? A. Therefore there was no competition, but there was competition in a few of them, and I think in other cases where there was competition, the upset price was raised. There are two examples here. One is where there was competition and that is on page 1 of the record. No. 2; it is No. 2 timber sale. The official number is X-3378 and its location is north-east of Myrtle Point. It was sold in May 1943, carries fir, cedar, white pine, cypress, hemlock and balsam. The upset price for fir was $2.75 per thousand. Cedar was $3.00 per thousand, white pine was $3.25 per thousand, cypress $3.00 per thousand, hemlock $1.50 per thousand and balsam $1.50 per thousand. The selling

price, the actual selling price was, fir $3.70; Cedar, $3.90; white pine $3.85; cypress -- .
We have another sale there No. 4. The official number is X-2883 at Jervis Inlet, which was practically the same types of timber, a very good timber.
It is on Jervis Inlet where there was no competition. The upset price was $3.00 for fir, $2.75 for cedar, $1.50 for hemlock and $3.00 for any other species at which prices it was sold.

Q THE COMMISSIONER: Where is Myrtle Point by the way?

A It is just this side of Powell River, my lord.

Q It would be a little longer tow than in the case of Island timber? A. Very similar my lord.

Powell River as youknow is practically opposite Comox on Vancouver Island and Myrtle Point would be just about opposite Union Bay.

MR. BALDWIN: Q: What are the dates of these contracts that you refer to.

THE COMMISSIONER: The dates are all shown, are they not?

MR. BALDWIN: Yes.

THE WITNESS: May 1943 and July 1943.

MR. BALDWIN: Q: Have you any other comment as to the reasons for no competition in those cases, in the majority of those cases?

A Nothing beyond the fact that they were only accessible to that particular location and consequently no one else was interested.

THE COMMISSIONER: Q: The loggers who would be interested in such small parcels would be the smaller loggers, would they not? A. That is right,

my lord, but some of those smaller sales were not contiguous to current logging operations, and in those particular cases why, there may be competition, and there may be not.

MR. BALDWIN: Q: What do you say as to the acreage in most of those cases?

A As a rule they are comparatively small. This one here I quoted was one of the largest sales that has been made in recent years, 4,707 acres. There have been larger ones, but not --

THE COMMISSIONER: Q: Would timber on such small areas be likely to sell at a higher or lower price than a larger area of comparable timber?

A Well, due to the fact that there was no competition, I think it would sell at a lower price.

THE COMMISSIONER: Is there anything further, Mr. Baldwin?

MR. BALDWIN: No, my lord.

THE COMMISSIONER: I think we might recess now and take the cross examination subsequently.

(PROCEEDINGS RESUMED AFTER SHORT RECESS)

MR. BALDWIN: My lord, there is just one question I would like to ask in direct examination.

Q Those timber sales contracts of which you made an abstract, Exhibit 24 -- did the timber with which those contracts were concerned -- was it free of royalty or was royalty payable with respect to that?

A It was all subject to royalty.

Q All subject to royalty. Is the royalty included in this stumpage -- it is shown right here -- what does

the crescent mark mean underneath that timber mark.

THE COMMISSIONER: We have had that already.

MR. BALDWIN: That is all, my lord, thank you.

CROSS EXAMINATION BY MR. McPHERSON:

Q Mr. Byers, when were you last on the Deep Bay property?

A I think it was in 1945.

Q 1945? A. As near as I remember.

Q When were you last on the property before that date?

A Well, I don't know whether I can answer that definitely, but I can say that I was frequently on the property during my trips to the Island.

THE COMMISSIONER: Q; Within what period of time prior to 1945? A. From 1928 to 1947 my lord.

MR. McPHERSON: Q: When you say frequently on the property, you mean you were right up on the camp site or walked around the timber?

A Sometimes I would not go in the area at all; sometimes I would go down to the booming grounds and up into the timber and up as far as the camp site.

Q When would you say was the last time you were in the Deep Bay timber before 1945?

A Well, I cannot definitely remember, but it would be probably -- it would not be more than a year at the outside.

Q That is you say you were in the Deep Bay timber in 1944. Would you have been in it in 1943?

A I may have been. I cannot say for sure.

Q When you were there in '44 and '45, the timber was

already being logged was it not?

A Yes.

Q Did you see the timber in the Deep Bay area, the Deep Bay Logging Company's, including Mr. Kagetsu's timber, anytime in 1942?

A That I could not say definitely. I might have.

Q Were you ever on block 617?

A I don't recall ever being on block 617.

Q When you went up into the timber, would I be correct what you did was go upon the railway and look at the timber as you went in. Did you go past the end of the steel?

A No, I did not.

Q You never went on past the end of the steel?

A No.

Q So if I say that the steel was not yet in 617, it follows you were not in block 617?

A It is possible.

Q So you don't know what timber was in 617 except by hearsay?

A Correct.

Q What would you say about the timbers that were remaining on the Deep Bay property between 1942. Do you think it was accessible timber?

A Yes, there was a large area of timber there accessible. In fact there was very little timber that was not accessible there.

Q Would you say it was readily accessible to a railway operation? A. Well, I think it could be handled by a railway operation,

probably in conjunction with some truck logging or skylining.

Q And if you used trucks in conjunction with railways, does that not greatly increase your cost of logging? A. To a certain extent, not greatly.

Q Does it not mean handling your logs twice?

A In transferring them from the truck to the railroad cars they lift a load at a time.

Q You think the timber in Deep Bay -- do you suggest the timber in Deep Bay was readily accessible to the railway that was there at the time you saw it last? A. Well I am not prepared to make that statement because I cannot say that I have been all over that area to find out whether it could be logged by railway or otherwise.

Q Did you base your evidence before of the value of the timber on its accessibility. That was one of the features as I recall it? You said it was accessible, topographical conditions were good, sheltered booming, short tows and so on. And you were comparing Vancouver Island timber with other B. C. timber and saying it was superior to most stands of B.C. timber, and in comparing the Deep Bay Timber logged areas you didn't really know whether the Deep Bay timber was accessible or not? A. There is no question in my mind about that, but I am not prepared to say it was accessible by railway.

Q There was a railway in there. That evidence has been given? A. Exactly.

Q If you were going to log the Deep Bay timber and you have been here several days and know those exhibits, Exhibit 13, -- if you were going to log this timber shown in green and you had no timber back here -- you had no other timber, would you have logged it with the railroad or converted it into trucks?

A That is an engineering problem which I would have gone into very carefully. I don't know. Possibly I would have decided to log it by road. I might have decided to log it by truck. It is impossible to say just how you are going to log a particular area especially when you are going to take into consideration the volume of timber you are going to take out.

Q But you would not like to express any definite opinion whether it was more economical to log it by truck? A. Absolutely not.

Q Would you agree with me that generally speaking today, logging in this province is by truck with the exception of a few large companies?

A There are a few large companies that are operating railroads, but the tendency today is to log by trucks, but not because the railwoad operation is not economical. The reason the trucks came into being was, because they can negotiate steeper grades than railroad can. That is why truck logging

has become so general.

Q When you say steeper grades, is that not a question of economics too. If the truck can take a steeper grade in going into the timber -- for the purpose of argument,-one mile into the timber,while because of the grades the railway has to go two miles, is there not an economic problem in building a railroad two miles as against a truckload of one mile? A. It depends where the timber is located.

Q But you made the statement they converted to trucks not because it was cheaper but you could get to the higher timbers easier. I suggest that the loggers did not convert the trucks merely to get to the higher timber, but it is cheaper to get to the higher timber?

A I am not prepared to admit that.

Q Did you make this map Exhibit 2?

THE COMMISSIONER: Q; Let me carry that a little further. It was a matter of economics that prompted the change-over to truck logging, was it not?

A Yes, my lord, it was, but one of the reasons, the compelling reason for the change-over to truck logging was they could reach timber which was inaccessible by railroad.

MR. McPHERSON: My lord, I think the witness said it was not a question of economics previously.

THE COMMISSIONER: He tells me it is.

MR. McPHERSON: I realize that.

Q Mr. Byers, did you make this map?

A No, I did not.

Q This map was taken from the government records?

A Correct.

THE COMMISSIONER: What map is this?

MR. McPHERSON: Exhibit 2, my lord.

Q Now would the government have made that map?

A I presume that it was made by the department in their draughting office.

Q Well, on Exhibit 2 can you tell me why anybody would build two roads running parallel like that, over all that distance, if that is a correct map?

A I have not any idea why that was done.

Q You were there in 1945?

A Yes, I was in that vicinity and on that operation.

Q Did you go up into the timber?

A I cannot recall.

Q Did you go up in the timber in 1944?

A I was up in the timber on several occasions in the last three years.

Q Would you recall having seen two roads running parallel like that? A. I don't emen recollect that.

Q Do you agree with me that if there is only one road, that this map is not correct?

A I don't know whether the map is correct or not.

Q Mr. Byers, with respect to Exhibit 22, which is the timber shown, scaled as coming off the operations of the Sable River Logging Company, that report does not indicate from what blocks

the timber comes from?

A It only indicates it came from some or all of those blocks. It didn't come from any other block except those indicated -- those covered by the timber mark.

Q I suggest to you that you don't know whether it came from any other timber blocks or not. You may know that it should not have, but you cannot say that it did not.

A I cannot say that it did not.

Q And you cannot tell from this report as to how much timber was taken off Blocsk 198, 234, 256 and 263 and 267, can you?

A Offhand I cannot tell you. If I had the maps to refer to I could, but I can probably go this far that all that timber came off those areas -- I don't know They are indicated by the years they are logged and we know when the timber mark was issued.

Q Are you presuming that the numbers I have just read to you are the numbers that you read out earlier?

A I don't know.

Q Becau se that is not what I have done. I suggest that you look at your figures to find out what this timber mark covers. Will you look at the paper you had this morning.

THE COMMISSIONER: Here.

MR. McPHERSON: No, my lord, he had a paper. He said timber mark 2-K-9 covered -- I don't think it was filed.

THE COMMISSIONER: Perhaps the witness might have Exhibit 2 before him at the same time.

THE WITNESS: Timber mark 2-K-9-crescent, covers block 198.

MR. McPHERSON: Q: Yes it covers 198, 234, 256, 263 and 267? A. Correct.

Q And it covers other blocks?

A It covers other blocks.

Q There is nothing in this report to indicate whether any timber came off the blocks I have just mentioned?

A Not in that report there is not.

Q Is there any way you can tell from that whether any timber came from off those blocks?

A Yes, block 198 -- there does not appear to be any taken from that; 234 there does not appear to be any taken from that; 256, there does not appear to be any taken from that; 263 part of that has been felled and bucked according to this map this year.

THE COMMISSIONER:

Q That is just a small portion in the south-west corner of 263? A. Correct, my lord. 267 there does not appear to be any timber logged from that area?either, under this timber mark.

Q MR. McPHERSON: If there was any timber logged from those areas , or any of those areas in the years set out in Exhibit 22 that you have filed, they could be included under that mark, could they not?

A Quite right.

Q Do you know when that map was prepared, what year?

A It would be prepared, I presume when the timber mark was issued.

Q When was the timber mark issued. Did you give evidence of that? A. I think that was in March, sometime in the fall of 1945, if I remember rightly.

Q Well, '48, you were referring to some '48 figure in the map. I have assumed that the map was prepard sometime in 1948?

A You mean this particular map or plan?

Q That particular map?

A This I presume is taken from the logging operation plan of the Forest Service?

Q That would probably be in '48 in view of the figures?

A Undoubtedly it would have to be. That was brought up to date, up to 1948.

Q Now there is nothing in either of these two reports for ~~minimum~~ block 195 -- Exhibits 22 -- and 23~~4~~ -- to indicate the size of the timber being cut?

A No.

Q Is it customary in scaling timber to put the small timber as No. 3? A. Well, with certain species it must of necessity go into No. 3.

Q Would that be hemlock?

A Yes hemlock has a minimum diameter for No. 3, as has fir and cedar.

Q What is the minimum diameter for hemlock?

A The maximum -- there is not a minimum diameter for hemlock. There is a maximum diameter for No. 3.

Q What is the maximum there?

A Well, I don't recall offhand, although I should know.

I have helped to draw up those grades myself, but I just can't recall the diameter at the moment.

Q Do you know what the maximum diameter for fir is?

A Yes, fir --

Q There is a minimum diameter for fir?

A The maximum for No. 3 logs is 12 inches for logs 24 feet long or over.

Q That is 12 inches at the top or bottom.

A 12 inches at the top, and 14 inches if it is less than 24 feet long.

Q Now 12 inches at the top -- now the butt would be larger than that?

A Oh yes.

Q Where do you put your trees in this scale that are below 12 inches?

A Well, that 12 inches is the maximum diameter -- the minimum diameter under which a log can be put into the No. 2 grade. Smaller logs 12 inches and under and 14 inches and under, can go into No. 3.

Q Then looking at Exhibit 22 and 23, would you say -- I will show you the percentage of hemlock on Exhibit 23; No. 3 hemlock is 60%?

A Yes.

Q Would that be due to either or both, the fact it is a poor grade of hemlock or there is a lot of small hemlock?

A. It could be either, but 60% in hemlock is a very -- is not a high percentage of No. 3. Hemlock does not grade No. 1 and 2 very high.

Q And you will notice in the Deep Bay -- block 195, Exhibit 23, that the percentage of hemlock is 44, a little over 44 No. 3 grade?

A That is No. 3 grade, yes. That indicates a pretty good type of timber.

Q No. 3 grade is not good hemlock?

A No, but 44% would indicate that the stand of hemlock is pretty good.

Q Do you think that 60.13% indicates a good stand of hemlock? A. No, it is about average.

Q Now with respect to loggers cutting Crown grant timber, would you agree with me, Mr. Byers, that if a logger has Crown grant timber under a certain mark, and he has some adjacent Crown grant timber which he has not marked yet, or has not got a mark for, or it may have a mark, that the department was not too fussy whether they did actually stick to the actual block, in Crown granted timber?

A I assure you that the Forest Branch was very particular about no trespass being made of areas indicated by the timber mark in question.

Q As between Crown grant timber?

A It made no difference whether it was Crown grant or in any other respect.

Q Now with respect to block 195, you stated you were never on that timber?

A No.

Q So you cannot give his lordship any information as to the amount of timber except from those figures or the size of the timber, whether small or large

timber? A. Well, I could tell you that it was large timber. No, comparatively -- well, it was average timber. That was indicated from the records in the Forest Service which shows the lengths and diameters under which the timber was cut. It was not small timber.

Q Would you say that if it had not been for the war and conditions arising out of the war that hemlock running 60% No. 3 would have been cut in 1938?

A Yes, it would.

Q You think it would, 60% No. 3?

A Undoubtedly.

Q You started to tell his lordship about some figures with respect to the acreage of 403 and the acreage of 195. Am I correct the figures you worked on w as to show how much timber you estimated was on 403 and 195 because of the stumpage?

A I t was to give the general picture.

Q Have you any recollection at all as to what your figurex showed as to the amount of timber on 403?

A I don't recollect correctly the acreage on every block, but we did -- I did not personally compute or try to compute the amount of timber taken from 403 and the amount taken from the other area, because in my opinion the difference in the topography, the difference in the stands, would not give you a fair picture. In my opinion the majority of the -- the bigger proportion of the timber or the bigger proportion per acre came off Lot 195, not off 403.

Q What do you base that statement on?

A Simply by the topography and the cruise map to which I had access.

Q But you have never been on either of those blocks?

A No, I am forming my opinions from the records I was able to get.

THE COMMISSIONER: Q; Those are records of the Forest Branch? A. All except the cruise, my lord, which was a cruise made by someone-- I don't remember who, who showed this area on #03 as being sparsley timbered and heavy to hemlock and balsam.

MR. McPHERSON: Q: When you were making your estimate, did you base the amount of your estimate of the amount of timber on the elevation of the land?

A I didn't make an estimate. I quit because I could see that the estimate was not going to be of any value to me.

Q Of value to you or of value to the fact generally?

A Of value to the fact generally.

Q It was not a question of finding there was more timber on 403 than on 195?

A It left me with the impression that there was more of that timber came off 195 than came off 403.

Q More came off 195? A. Yes, more per acre came off 195 than off 403.

Q Do you know anything about this map; who made it or when it was made. This is Exhibit 1, my lord. Do you know when it was made and who made it?

A Well, I think that is a tracing taken from a

Forest Branch operating map of that area, as near as I can establish.

Q With respect to the cutting of timber down to 12 inches D.B.H. diameter, will you give his lordship any idea at all as to the approximate increase in production when you start to cut below 18 inches? What do you think that the percentage increase would be of timber on Vancouver Island? if you started cutting 16 inch timber as well as 18. What would be the percentage?

A Well, that is a very difficult question to answer. I can probably best answer that in a cruise which I made myself, which cruise was taken down to 18 inches D.B.H.

Q When was that cruise made?

A Oh, that was a cruise I made somewhere in the twenties.

Q Yes? A. I recruised the area and took it down to 12 inch diameter and the difference between the two cruises was 12,000 feet per acre.

Q Well, can you tell his lordship how many acres there were so we can get some comparison between the two cruises in quantity?

A Well, if I remember rightly the 18 inch D.B.H. cruise ran 32,000 feet per acre -- no, pardon me, 52,000 feet per acre, and when I finished the second cruise, I had 56,000 feet per acre. There were 80 acres in that particular lot.

THE COMMISSIONER: Q; What difference in time was there between the two cruises?

A One was made directly after the other, my lord.

MR. McPHERSON: Q: But you would not say that the 52,000 cruise was comparable to Deep Bay operation?

A 52,000 per acre?

Q 52,000 per acre? A. I would say it was fairly comparable.

Q You think that was comparable?

A Yes.

Q That seems like a very small percentage of increase from cruising all the way from 18 to 12 inches? A. Yes, in that particular instance it is, but I am not assuming for a moment that would apply on all operations in all areas.

Q That would indicate that was a fairly big stand of timber? A. It was a good stand of timber. It was thrifty.

Q You said that the present policy in British Columbia in logging was to utilize down to 10 to 12 inches?

A Yes.

Q And indicating there was a new trend to do that?

A No, I would not say it was a new trend because it has been done for years, to my knowledge; for the last fifteen or twenty years they have been relogging areas in the Fraser River Valley and sawing timber down to 10 inches D.B.H..

THE COMMISSIONER: I understood you to say earlier it was 1936 when the change took place?

A My lord, I am not indicating that the change took place then, but that practice was in vogue long before 1936, but since 1936 the tendency has been for closer utilization as we go along. That was brought on by various factors.

MR. McPHERSON: Q: You referred to the rising cost of log prices, the rise of log prices?

A Yes.

Q Over the period of the last few years and my recollection is you stated that today they are at the highest they have ever been in the history of British Columbia logging?

A Yes.

Q Would I be correct if I said that the cost of logging is the highest it has ever been at?

A I think you would.

Q Would it be correct if I said the cost of standing timber did not rise proportionately?

THE COMMISSIONER: With what?

MR. McPHERSON. With the cost of logs.

THE WITNESS: The cost of standing timber started to rise before the price of logs.

Q But would you say that the cost of standing timber today is proportionately higher than it was in the year 1942 -- the same proportion as the cost of logs today, in 1942?

A I would not like to say the same proportion. I would say it was higher. I would not like to say it was the same proportion.

Q Is it not a fact that the cost of logs has skyrocketed

since the controls were lifted in 1945?

A Quite so.

Q Is it not a fact that the price of standing timber has never since the outbreak of war really skyrocketed to the same extent?

A Yes, but the price of standing timber started to skyrocket before controls were taken off logs.

THE COMMISSIONER: There being no control on the price of standing timber?

A That is right, my lord.

MR. McPHERSON: Q: What year would you say the price of standing timber started to rise?

A The price of timber definitely started to rise around 1938. If you will recall , if I may explain, about that time and for the next one or two years after that, there were large mergers of logging companies in this province, and that created a condition of alarm amongst the smaller operators, and they say that if they did not get into the timber business themselves and purchase standing timber, that they would not be able to purchase logs to keep their mills running, and from then on the race for timber was on, and stumpage prices started to skyrocket and they skyrocketed long before the price of logs, when the controls were taken off.

THE COMMISSIONER: Q: I am concerned more with the E. & N. timber than with any other in this case. Have you any information as to the increase in price imposed

BY THE E. & N. Railway company for its standing timber in the period say from 1940 to 1944?

A No, my lord, I have no knowledge of any particular jump of prices during that period. I think that the E.&.N. Railway pursued the policy that they had to my knowledge been pursuing previously, inas much as they were more concerned to get reliable operators into their timber, and depended more on the freight that they got from hauling the lumber or hauling the logs than they did from the actual stumpage price.

Q Then the general rise you speak of in standing timber does not apply to the E & N timber?

A I don't think it does, to my knowledge.

MR. McPHERSON: Mr. Byers, on this question his lordship raised, you expressed the opinion that the government upset price shown in exhibit 24, was low. You don't know what the E. & N. timber was selling for, do you?

A Only by hearsay.

Q Have you any idea what the E. & N. timber was selling for in 1941?

A You mean specific cases?

Q Yes. A. I have not specific cases.

Q Have you any idea what it was selling for in 1942?

A No.

Q Or '43? A. Only rumours.

Q Have you any idea what private sales were made from '41 to '43 and what the price was?

THE COMMISSIONER: On E. & N. timber?

MR. McPHERSON: No, private sales, my lord, private timber.

THE COMMISSIONER: Outside the E. & N.?

MR. McPHERSON: Well, not owned by the E. & N. Company.

THE COMMISSIONER: Let us understand one another. The E. & N. Railway belt has been to a considerable degree alienated?

MR. McPHERSON: Yes.

THE COMMISSIONER: Outside the E. & N. belt there is a large quantity of standing timber in the province. Are you referring to the timber in the E. & N. belt or outside of it?

MR. McPHERSON: I am referring to the timber in the E. & N. belt which would be comparable to the Deep Bay.

THE COMMISSIONER: And which has been alienated.

MR. McPHERSON: Yes, and was a private deal.

THE WITNESS: Well, I was working for the government during that time. Now I am in that business myself, and I cannot speak authentically of any sale that was made during the period that you mention.

Q When did you leave the government?

A In 1947.

Q You made the statement this morning those prices were low, when those prices are all in '43 and '44 and you say you cannot compare them to anything? A. I made the statement there was no competition and the

government was anxious -- just as anxious to get rid of the timber as the operator was to get it, because it was going to be a total loss if it was not taken out. That is why the government stumpage prices are lower than the private stumpage prices.

Q I am intrigued by your suggestion that there was no competition. You prepared this sheet?

A I did.

Q In 1943, which is the year that the timber was sold we are talking about, I notice from your own statement that there were eight sales?

A Out of a total of how many?

Q I have no idea. You extracted this information and you put eight sales down here, four of which had competition?

A Eight sales, and I think there were 38 sales altogether and I didn't say there was not any competition, what I say is there was very little competition.

Q Well, take your whole report. In your report there are 26 sales listed and out of the 26 there was competition in the case of six of those sales?

A Yes, six out of 26.

Q Do you think that was reasonable?

A About 25%.

Q Would that be reasonable?

A No, I don't think that would be reasonable. I don't think there was competition in that percentage of sales, of the sales made by the department. It just happens there was in that

particular abstract we made but I don't think it would stand up to that percentage all the way through.

Q But you have told us that the upset price there was in your opinion low as compared to the private and E.& N. sales.

A That is right.

Q But you don't know what the private and E & N. sales were?

A Well, I know, but then I can't prove it. There is no use my trying to tell you something I cannot prove. No one can be in the timber industry as I was and not know what those -private sales were made at.

Q That is right. I would not mind hearing what they were made at, although you cannot prove it? A. I would not like to quote them.

Q Would you not quote them to sell them?

A No, I could not do that. I can give you a specific instance of timber which I have been dealing with in the last year.

Q That would be no use to his lordship because we are discussing 1941, '42 and '43.

THE COMMISSIONER: Perhaps we may have some information already. Mr. Kagetsu told us he bought 504 in 1939 for the price of $14,000. And on that stand there was a little over nine million feet. Now with those figures before you, what does

that work out at, Mr. Byers; nine million feet in 1939; the E. & N. price was $14,000.

MR. McPHERSON: It works out at $1.50 per thousand.

MR. BALDWIN: That is from the E. & N.

THE COMMISSIONER: That is right.

THE WITNESS: Well, I would say that is about correct, according to my knowledge.

MR. McPHERSON: When you were in the government, did you have anything to do with the sale of timber?

A No, I did not.

Q You had nothing to do with the setting of this upset price? A. Referring back to the time when I was ranger, Forest Ranger and Forest Supervisor, yes, I was the one who made recommendations on the upset price in the cases I was dealing with during my particular time. During the time I was supervisor of scalers, I did not. That was not part of my duty.

THE COMMISSIONER: I suppose you will be some time longer?

MR. McPHERSON: Yes, my lord.

THE COMMISSIONER: We will adjourn now to two o'clock.

(PROCEEDINGS ADJOURNED TO 2.30 P.M.)

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

Deputy Official Stenographer

Vancouver, B. C.,

November 18th, 1948. 2:00 P.M.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

WILLIAM BYERS, resumed the stand:

CROSS-EXAMINATION BY MR. McPHERSON, RESUMED:

Q Mr. Byers, when we adjourned I had just asked you if, in your duties as a forestry man, you had a anything to do with setting the upset price for Provincial timber, and I think you were just on the point of telling his Lordship you did have something to do with the setting of the price. A: Yes.

Q And I presume that being an employee of the Province, a Civil Servant, you used your best judgment and set what you thought was a reasonable price? A: Quite so.

Q So you would say that your up-set prices were the fair prices at that time?

A Based on the cost of logging and the difficulties of getting the timber out.

Q So that as a Civil Servant knowing upset prices that might be used to dispose of lands owned by the people of British Columbia, I take it you felt considerable responsibility and were sure your price was a fair price?

A Quite so.

Q Why do you suggest that other rangers and other people working for the Province of British Columbia set low prices and were, in effect, giving

away something that belonged to the people of British Columbia?

A I am not suggesting that.

Q You said these prices were low.

A I still say the prices are low.

Q You just said you set what you thought was a fair price? A: But they were based on the cost of getting it out and have no relation to the selling price.

Q But isn't it true that anybody selling and buying timber would take into account the cost of logging, the accessibility, and all the features you mentioned?

A Yes, and the fact they want as much as they can get for it.

Q But doesn't the Province want as much as they can get for it?

A It is not their policy to boost their prices.

Q But are you suggesting to his Lordship that the Province of British Columbia is selling assets belonging to the people of British Columbia below what they could get for those assets? A: If that particular timber was in private hands, I haven't any hesitation in saying a bigger price could be obtained.

Q But I am asking if you have suggested that the Province of British Columbia is selling timber below what it is worth?

A I wouldn't like to suggest that because they

base it on the cost, but I still maintain if that timber was in private hands it would sell for more.

Q Mr. Byers, would you agree with me that a scattered stand of timber would have more small trees than an old matured stand of timber?

A No, I couldn't agree to that because the conditions vary. In some cases where scattered timber is standing there is very often large trees, and in other cases it may be young growth and small trees.

Q Let's take the standing timber you cruised yourself at 52,000 feet to the acre at 18 inch D.V.H., and considering again it went down to 12 inches and got an overrun of 4,000 feet per acre. A: Yes.

Q Am I correct that the reason why there was such a small overrun of little timber was because there was a lot of matue heavy timber which would crowd out the little timber?

A I would say there was a lot of timber wich was over 18 inches D.V.H., but I wouldn't say it was all large, mature timber. Certainly there was a predominance of timber over 18 inches D.V.H.

Q Would you agree with me that a logger would be willing to pay more for a heavy stand of timber per acre than for a light stand of timber per acre? A: Absolutely.

Q In these figures in Exhibit 24 which you have

filed, would the acreage listed there be more than the acreage of timber or would there be timber on all the acreage, generally speaking?

A: That I can't say, but I think from what little knowledge I have, and which has been gained through discussing the matter with other people and from records which I have had access to, that the timber was fairly uniform.

Q Well, Mr. Byers, you said this morning tat you thought that the timber that you cruised was comparable timber to the Deep Bay timber, is that right?

A Yes.

Q That is, the timber you cruised at 52,000 to the acre was comparable to the Deep Bay timber?

A Yes.

Q On the other hand, you had never been on Block 1617 but you had information about the timber?

A Yes. I might state that I have flown over this country on many different occasions. I have also fought fire in that country. I know that country probably as well as any man in British Columbia.

Q Therefore, your opinion that 52,000 to the acre in the case you give is comparable to Deep Bay would be a very good opinion?

A I am not giving it that the stand of timber at Deep Bay was only 52,000 feet.

Q Do you think it was more than that ?

A I would say it would go a little higher, not very much.

Q And you would base that, I take it, on your knowledge of timber and the fact that you have flown over practically the whole of Vancouver Island, and so on?

A Yes.

Q In view of that would you be surprised if I told you that Exhibit 16 shows that Block 161 7, which had never been cut at the time of sale, was a block of timber of 790 acres and that the E. & N. cruise was only 7,298 thousand feet; that Block 566 shows 487 acres and the cruise of the E. & N. timber was 5646 thousand feet; that Block 504 shows 1372 acres and the cruise of the E. & N. timber was 9363 thousand feet. That makes a total of 2649 acres on which the E. & N. cruised 22,707 thousand feet of timber, or an average on this comparable timber you are talking about of only 8,400 feet to the acre.

A I would say that cruise is absolutely ridiculous.

Q I will use Mr. Kagetsu's cruise for the purpose of argument. We have had from Mr. Kagetsu, who has been cruising, he said, thirty years, -- he said the E. & N. cruises were always 100% below his cruise and it is still only 186 hundred feet to the acre.

16,800

A It is still low at that figure, in my opinion.

Q And you say that the Deep Bay timber should run, in your opinion, over 52,000 feet to the acre?

A: It should run

between 50,000 and 60,000 feet to the acre on an average.

Q In your position with the Provincial Government, I suppose you knew a great deal about timber that was for sale in the Province?

A Yes, we had a pretty good idea what was for sale.

Q And you made a statement this morning that from 1938, I think, onwards, when the big mergers started, the little logger had to rush out and get timber? A: Pardon me, I didn't say the little logger had to rush out and get timber. I said that the smaller mills who had no timber stumpage behind them, and were dependent on the open log market for their supply of logs, got alarmed and were afraid they were going to be frozen out and consequently they made what arrangements they could to obtain standing timber to keep their mills supplied; and that was the real reason for the jump in stumpage prices.

Q Does it follow from that, then, that the lumbering industry generally was very interested in where there was timber available and kept pretty well in touch with the market?

A I think they were very well aware of any timber that was for sale, or would be for sale, and I think they had their scouts out looking for it.

THE COMMISSIONER: Q: What period are you speaking of now?

A: From about 1938 onwards.

MR. McPHERSON: Q: Up to the present time would that be?

A Yes, practically up to the present time.

Q I would be correct, wouldn't I, if I said it was common gossip in the lumbering industry on the Coast here as to what timber would be available and what timber might become available or what timber was for sale actually. That would be a reasonable statement, wouldn't it?

A Yes, that is true.

Q I suppose at the time the Custodian took over this timber that, as a Provincial Government officer, you had some knowledge of the Custodian's taking over companies like Deep Bay and Royston?

A I knew of it; saw the advertisements in the paper.

Q And you knew that at the time, I presume, that the Custodian sold a block of timber at Cowichan, Cameron Lake, and Nimpkish River near Alberni? A: Well, I had general information on the matter but nothing specific.

THE COMMISSIONER: Q: While on that subject, do I gather from your remarks that persons engaged in the industry in 1943 and 1944 were aware that these blocks of timber belonging to Japanese organizations were on the market for sale or likely to become so?

A I think that is the case, my lord.

Q In other words, the information was pretty widely disseminated in th industry?

A I have no doubt.

MR. McPHERSON: Q: The statistical information contained in Exhibit 24 was extracted by you and does not contain all the sales?

A No, very few.

Q Would you consider it is a fair representation of sales comparable to the Deep Bay operation?

A Well, it is as fair as anyone could make it, I think. Someone else might have a different opinion but to me that seemed to be fairly comparable.

MR. McPHERSON: If my learned friend could loan Mr. Byers his Exhibit 24.

Q Now, Mr. Byers, we have been talking about acreages and comparable sales. Take the first sale listed there, No. 1, near Sayward, a sale made in May, 1943. I add up the estimated amount of timber at 965,000 for thirty acres which works out to 32,000 an acre. Do you agree that is approximately correct?

A It may be. I couldn't tell.

Q If you add up the amount of timber you get 965,000 and if you divide it by 30, you get approximately thirty-two thousand. Am I correct? A: Yes, but I am not prepared to admit that cruise is correct. As a matter of fact, as you know, the way these sales are handled by the Provincial Government

Forest Service, the amount of the cruise doesn't matter a very great deal except it will affect the appraisal, but they don't base their price of the timber on the cruise. They base it on the logs scaled and taken frmm that particular area.

THE COMMISSIONER: Q: In other words, all these sales a are on a stumpage basis?

A That's right. If their scale runs 100% over the cruise, then the value of the sale would be double although it would not appear on the scale.

MR. McPHERSON: But surely there must be some relationship between the cruise stated there and the actual timber on the property?

A I admit there is some relationship but most of these cruises are done on a very conservative basis.

Q You would say on that first block then of thirty acres that 965,000 is probably very conservative? A; Well, I haven't stopped to figure it out on thirty acres. It might be thirty thousand to the acre. I would say it was conservative although the average stand is over thirty thousand per acre, but there may be timber sales there that would be approximately the amount of timber that was on the area.

Q But you can't have this both ways. You have stated, first of all, that you didn't like the E. & N. cruise I quoted compared with your

own figures -- it was low; that you didn't like the upset price here. Now you tell me you don't like the cruise here, that that doesn't really mean anything, and you said that the cruise would be low. Are you saying now that the cruise is high?

A No, it is conservative.

Q Would it be fair if I said all the cruises here in your opinion would be conservative?

A Yes.

Q Let's go on then. First, say thirty thousand acres, 965,000, works out at 32,000 an acre?

A Yes.

Q Take the next one, Myrtle Point. First of all, I would ask you whether or not I am correct that that is principally a cedar show?

A 50% cedar.

Q And actually the Deep Bay property didn't run 10% cedar, did it?

A No.

Q I would also point out that even/allowing for the cedar that if you add up the figures it works out to 15,000 to the acre. I would point out that your next example, Sayward, --

THE COMMISSIONER: Is Mr. Byers acquiescing in your estimate of 16,000 to the acre? It is just a matter of calculation.

A I think that is a very, very low cruise. I would be very surprised if this doesn't cut over 15,000.

MR. McPHERSON: Q: I am quite satisfied to accept 16,000 at the moment. I am prepared to accept your statement it would cut over, but I am taking these cases we say are similar to Deep Bay, and I want to show you how much they run on the Province's own figures. First, do you agree it is approximately 16,000 to the acre on that cedar proposition at Myrtle Point? Do you think that would be fair?

A My experience tells me that cruise should be higher.

Q I am talking about figures which you gave his Lordship. Never mind what you think it would run. If you divide 4707 acres into the total, less the cedar, it works out to 16,000 to the acre?

A: Yes.

Q Would you accept my statement that that is probably right?

A Yes.

Q And if you take Sayward, the next sale, 200 acres, that adds up to 4,650 thousand. That is approximately 23,000 to the acre?

A Yes.

Q If you take the next one, 67 acres, it works out to approximately 15,000 to the acre?
The next one, at Duncan, -- am I correct that is principally a hardwood proposition?

A What number is that?

Q No. 5. A: Yes.

I wouldn't say it is principally hardwood, but I would say it is small timber because there seems to be an excessive amount of cedar, poles and piling and also there is some maple and alder in there.

Q It is about 80% hardwood from the standpoint of the timber?

A That is correct.

Q There wasn't any hardwood to speak of at Deep Bay, was there?

A No. There was some.

Q You wouldn't say that was comparable, would you?

A Well, I wouldn't say it was comparable to the Deep Bay timber, no.

Q If you turn over the page and look at No. 7, in the Alberni District, that is 147 acres, 2815 thousand, or twenty thousand to the acre?

A Yes.

Q And the next one is small. But take the next big one, Renfrew Harris Creek, the last one in 1943, that works out to 13,636 thousand which is approximately fifty thousand to the acre on 271 acres?

A Yes.

Q Now, Mr. Byers, if Mr. Kagetsu is correct or if the E. & N. Timber Company are correct, the Deep Bay timber on the evidence given here so far has been running at 8,400 to the acre. The cases you havegiven his Lordship as samples comparable to Deep Bay, the lowest you have given

his Lordship in 1943 is 15,000 to the acre and it goes up as high as 50,000 to the acre and you admit the figures are low?

A It must be low. I would like to make a statement in regard to that. I don't know any logging operator that would be interested in logging timber that ran 8000 feet to the acre.

Q There was one who was logging it. I shall endeavour to show it wasn't economical.

In view of the way they put up timber in the Province for sale and your suggestion that these cruises are low, isn't it a fact that any man buying Provincial timber has a pretty good idea of what he is buying?

A As a rule, yes.

Q And he bases his offer on what he knows is there, not what the Province tells him is there?

A I don't agree with that.

Q Don't you agree that the buyer in buying timber, if a prudent buyer, would satisfy himself that at least what the Province said was there was there or more?

A Yes, I agree that a prudent buyer would but I know cases where many men have bought timber they never even saw, just simply took the Government's cruise.

Q Would you say that H.R. MacMillan was a prudent buyer? A: Certainly.

Q With respect to these sale prices here, am I correct that in buying timber from the Province of British Columbia, you only have to put down

10% of the stumpage; you don't pay cash; you pay 10% of the stumpage?

A Plus the cost of the cruise, plus the cost of the advertising and the first year's rental.

Q You put down 10% stumpage and the timber is cruised, is it?

A The timber is cruised before the 10% is paid.

Q So that these figures aren't just guesses. These, as a matter of fact, are based on somebody's cruise on these statements?

A Presumably.

Q In any event, you pay 10% for stumpage? You have to pay a royalty on the timber and the stumpage is 10%. Would you agree with me that all the money you are required to put up is about 6% when you take the royalty into account?

A: I might, if I may be allowed, qualify that. Up until the end of June, 1947, that condition did apply but since that time the stumpage is included with the royalty and the tenderer has to put up 10% of the stumpage value which includes the royalty.

Q Of course that all happened since the Custodian sold the timber?

A Yes.

Q So my statement is correct?

A Yes.

Q The value of this timber, I suppose, would depend largely on the statements you made this morning: Its accessibility and proximity

to the market. Isn't it also true that with respect to Government-owned timber, a logger working in an area where there is timber -- for example, in the Sayward District -- wouldn't buy that timber until he needed it?

A Yes, that is generally the situation.

Q And at the time he made an offer to buy it and the Government put an upset price on it, am I correct by that time he, of course, would have his roads into that neighbourhood?

A He might have his roads adjacent to the timber, but he has no right to have them in the timber.

Q Therefore, the timber would be worth a little more because he was near the market, but now he has his road near the timber?

A Yes.

Q So the timber is worth more?

A I can't say that.

Q Isn't it, if you have roads up to the edge or a road built one to five miles to get your timber?

A Yes, sure, but if the Government hadn't been willing to sell that timber he simply wouldn't be able to get it .

Q But as a general rule the policy of the Government is to sell to the man who has the adjacent timber?

A That is true but there is another reason. The man would naturally not ask for that timber to be put up for sale until he was ready to cut

it, but in some cases in latter years these operators have had to act because they were afraid of someone else coming in and applying for the timber they wanted. So they bought it before they really wanted it.

Q I don't understand that statement. When a man buys Provincial timber, he has to give an undertaking to cut it within so many years.

A He can always get an extension of the contract. Up to the present time, anyway, he has been able to do that.

Q And the buyer of this Provincial timber, am I correct that he pays for the timber as he cuts it?

A He pays for the timber as he has it scaled.

Q Am I correct, then, that the only capital he invests in the timber is the 10% and the few extra charges you have mentioned?

A Correct.

Q Am I also correct that if the buyer doesn't complete his contract, even if he gets extensions, all that he loses is his deposit?

A That is so, as far as I know. That was the policy and I think it still is.

Q Wouldn't you agree with me that a man who is buying Provincial timber of the nature set out in Exhibit 24, who doesn't have to gamble a large sum of money, who doesn't have to gamble on the market, who doesn't have to pay interest on his investment, who hasn't tied up his capital,

who isn't running a fire risk, and who doesn't have to complete his contract, except if he doesn't he loses 10%, don't you think that timber is worth more than paying cash for timber?

A You say, "Who doesn't carry a fire risk". Well, he does carry a fire risk.

Q He carries a fire risk to the extent he is cutting timber, doesn't he?

THE COMMISSIONER: Would it not be the extent he has an investment in the timber?

A Once he acquires that timber, he may start to construct roads andthe more roads he constructs themore investmant he has got.

MR. McPHERSON: Q: That is right, but as he constructs the roads he is taking out the timber and paying for the roads out of the sale of the timber?

A Quite so, but the roads cost himx a considerable amount and he figures out the cost per thousand to find out if he can get them out economically. Therefore, he has an interest in the fire risk.

Q Why would that make any difference in the comparison between buying timber on stumpage and cash? You have to build roads in both cases.

A Quite so.

Q Don't you agree that the man who buys timber for cash is not only taking a bigger risk but economically he is investing his capital and then he has to take the timber out, that he should get his timber for less than the man buying on a stumpage basis?

A If he has expended the cash, yes.

Q And am I correct that, generally speaking, in this Province, the difference between cash deals& -- and I am not talking of thirty acres or sixty-seven acres; I am talking about fair sales of timber -- the difference between buying timber on cash and stumpage basis is generally speaking somewhere about twenty-five percent. Would that be fair?

A I think that difference is too great.

Q What would you put it at?

A Probably ten percent.

Q And you think they are only entitled to 10% in a timber deal where you have invested $100,000.00 cash, run all the risks of fire and everything else, and pay the taxes, as against a stumpage basis -- there is only 10% earnings on his money? A: I am not saying what you are entitled to. I don't think you could buy for cash 10% cheaper than on a time basis today or even back in 1942 and 1943.

Q If you were selling timber, would you expect to get 90% for cash as against terms over a period of years on a stumpage basis?

A Yes, if I had good timber.

Q If you had good timber?

A Yes.

Q If it wasn't good timber, you would get less?

A I probably would, yes.

Q Of course your decision would depend on the market, wouldn't it?

A Yes.

Q With respect to the figures given in Exhibit 24, do you know whether all these properties were logged whether the contracts were completed?

A: I haven't any idea.

Q That would affect the value of statistics whether the people who bought the timber then let it go?

A It would, but, generally speaking, those contracts are completed.

Q Would I be correct that if I said that timber sales held by the Province that at times the bidders who are most affected get, shall we say, stubborn and bid prices far in excess of the real value of the timber?

A They do that. I don't think it is fair competition but they get their heads together and get it for less than its value.

Q Do you know of any case recently in British Columbia where Provincial timber, fir, was bid up as high as $17.00 a thousand?

A Yes, I do.

Q Do you know whether or not the people who got the timber allowed their deposit to go?

A I have heard rumours they did.

Q So it doesn't follow that when you have statistics produced by the Province that these contracts are completed?

A Well, that is one case.

Q You say this is a fair extract from the Provincial

records for 1943 of comparable timber to the Deep Bay Logging Company?

A Yes.

Q I suggest to you that you have taken the high sales and you haven't taken the low sales of comparable timber?

A That is correct.

Q So that this isn't really a cross section? These are high sales.

A Those are among the higher sales. I didn't take any of the very low ones.

Q Would you say the timber around Nanaimo was comparable to Deep Bay timber?

A Well, generally speaking, yes.

Q Would you say that timber in the Kootenay area was comparable to Deep Bay?

A Yes, much the same.

Q I would like to show you a sale, Mr. Byers, to Frank Bevan Lumber Company. Do you know them?

A Yes.

Q Here is a sale No. 32802, 112 acres, and I don't think it is necessary to put in all these statistics of the other species, but the fir was 1,509,000, and you notice that the figure is 2.75 for the upset figure and the tender was 2.75?

A Yes.

Q And the royalty was $1.22?

A No competition.

Q No competition on that. A: No.

Q I xpoint out to you that on sale No. 2 in May ,

1943, on the statement you filed as Exhibit 24, there was competition and the price was $3.70, and you are suggesting that because there was competition they got a higher price, is that right? A: Yes.

Q And as a result of the competition you think that would give you a fairer price?

A I wouldn't xxx be prepared to say it would give you a fairer price. I would be prepared to say it would give you a higher price, which is proved, I think, in every case where there was competition.

Q I point out that on the basis of your own statement, that is the cedar show at Myrtle Point, I point out to you that ranx to 16,000 to the acre, and you have agreed with me, haven't you, that heavy timber is worth more because it is cheaper to log?

A You mean a heavier stand of timber?

Q Yes. A: That is true.

Q Now, I show you another sale to W.W. Bakai of Courtenay. That is pretty close to the E. & N. timber, isn't it?

A They are operating north of the Seymour Narrows and also in the Courtenay area, but I don't think there is any timber sale in the Courtenay area that I am aware of.

Q Where do you think this timber was? Can you tell from that?

A No, unfortunately there is nothing in it to tell where it was, but I rather think that is on

Johnstone Straits above Seymour Narrows.

Q And that is No. 3929 and it is 142½ acres, and fir, 820,000 of $2.25?

A: Yes.

Q I again presume you point out there was no competition. A: I imagine there wasn't.

Q Well, there wasn't. I show you another sale to A. McGarrigle, No. 33392, 397½ acres, 1,485,000 fir at $2.25 plus a royalty of $1.22. Would you think that would be comparable timber? Do you know where it is?

A I don't know where it is exactly but I rather think it is in the Nanaimo district; knowing the operator. I wouldn't say it was comparable timber because if it is in the area I think it is, it isn't quite as good as Deep Bay.

Q It isn't quite as good as at Deep Bay?

A No.

Q You are familiar with the reports of the Forest Branch? A: Yes.

Q I produce this to you. I take it my learned friend doesn't object to filing this as an exhibit.

MR. BAIDWIN: No.

MR. McPHERSON: This is for the year 1942, my lord, and I am getting the years 1941 and 1943, which I understand are in the mail from Victoria.

THE COMMISSIONER: Yes.

(FOREST BRANCH REPORT MARKED EXHIBIT 1388-25).

MR. McPHERSON: Q: I show you page 34. Now, this shows, doesn't it, that in the Vancouver area the average sale price of Douglas fir in 1942 was $2.41?

A Yes.

THE COMMISSIONER: That is timber, is it?

MR. McPHERSON: Yes, Douglas fir.

A That's right.

Q And to that, of course, would have to be added t the royalty? A: Quite right.

Q And would you agree with me it averages about $1.22 a thousand?

A Yes.

Q And the average price for cedar in 1942 was $2.64? A: Correct.

Q And what was the royalty on cedar, have you any idea? A: The same, $1.22.

Q And the average price of hemlock was $1.07?

A Correct.

Q And the royalty on hemlock?

A Sixty cents, I believe, at that time.

Q And balsam is shown here as $1.28 a thousand, is that correct?

A $1.23.

MR. McPHERSON: Yes. Your eyes are better than mine. My lord, while on this point, unless my learned friend objects, I have obtained the other figures from the only copy of the report that they had in the Vancouver office

for 1943 and 1944, and I will be filing those reports when I receive them, but in order that your Lordship may have them in your notes, I will read them.

THE COMMISSIONER: Yes.

MR. McPHERSON: 1943, fir, $2.47; cedar, $2.28; hemlock, $.94; balsam, $.93.

THE COMMISSIONER: Q: Was there any increase in the royalty between 1942 and 1943?

A No, my lord.

MR. McPHERSON: And in 1944, $2.57 for fir; $2.95 for cedar; $1.58 for hemlock; and $.64 for balsam.

MR. BALDWIN: I think my learned friend has made some mistakes.

MR. McPHERSON: I think the balsam should be $1.64, is that correct, Mr. Baldwin? Have you got the figures?

MR. BALDWIN: Yes. I did exactly the same thing as my learned friend did, my lord, only my figures are not the same as he gives for 1943. On fir I have $2.76 and cedar $2.95.

MR. McPHERSON: Has my learned friend the reports here?

MR. BALDWIN: Yes. I was going to file this for a different purpose.

MR. McPHERSON: I have the book for 1944 now, my lord, and I find that all the figures I quoted to your Lordship were high. It appears that the report the liquidator obtained by telephone, they must have been looking at the wrong line. I will give you the correct figures for 1944

and file the report as an exhibit. The Vancouver area, 1944, fir, $2.44; --

MR. BALDWIN: Will my learned friend indicate what page he is reading from?

MR. McPHERSON: 38.

THE COMMISSIONER: Will counsel get together on this and make sure you agree that these prices you are now giving are correct?

MR. McPHERSON: Fir, $2.44; cedar, $2.82; hemlock, $1.25; balsam, $1.21.

MR. BALDWIN: If my learned friend would refer to page 37 of the same report that is entitled "Average Stumpage Prices", etc., Douglas fir there reads --

THE COMMISSIONER: Just a moment. I will give counsel an opportunity to get together. We will recess for a few moments and it will give you an opportunity to check your figures.

(PROCEEDINGS RESUMED AFTER SHORT RECESS).

MR. McPHERSON: My lord, the confusion on these figures arises from the fact there are two schedules. One of them relates to the bids received by the Province for timber, the average price on the bids, and the other schedule relates to the receipts by the Province for timber but not necessarily the same timber. So it is impossible to say that in the year 1942 you can compare the two schedules in that report as applying to the same timber.

THE COMMISSIONER: The bids would seem to be the most

helpful, would they not?

MR. McPHERSON: Yes, my lord, and I would propose with my learned friend's permission putting in the 1942, 1943, and 1944 reports of the Forest Branch, and then read into the record --

THE COMMISSIONER: Instead of putting in the actual reports, it would suit me better if counsel could agree on an extract from those reports.

MR. McPHERSON: Yes, my lord, I think we could. I didn't know that my learned friend had this when we were discussing it, and I haven't had an opportunity to consider this schedule which goes all the way to 1947.

If your Lordship would permit, I would just read at this time, without putting in the reports, the figures, which we did show.

THE COMMISSIONER: Very well.

MR. McPHERSON: Then my friend can put in this schedule, if he wishes.

THE COMMISSIONER: All right.

MR. McPHERSON: 1942 bids received, fir, $2.41; cedar, $2.64; hemlock, $1.07; balsam, $1.23.

1943: fir, $2.76; cedar, $2.95; hemlock, $1.48; balsam, $1.42.

1944: fir, $2.57; cedar, $2.95; hemlock, $1.58; balsam, $1.64.

And the receipts --

MR. BALDWIN: If I might interrupt my learned friend, for your Lordship's notes perhaps it would be more convenient to have this now. There are some figures here per thousand on the fir

only. He has given the average in all species, and the range is also included in the Forestry reports; in other words, the lowest to the highest.

THE COMMISSIONER: Yes.

MR. BALDWIN: 1942, the range per thousand on fir, $1.50 to $3.00; 1943, $1.25 to $6.50; 1944, $1.60 to $4.50;

THE COMMISSIONER: Just what are these high figures?

MR. BALDWIN: The highest stumpage rate; the highest single contract.

THE COMMISSIONER: And that is all in connection with lands on which the $1.22 royalty was paid?

MR. BALDWIN: Yes, my lord, royalty was payable with respect to all this land.

MR. McPHERSON: The receipts: 1942, fir, $2.29; cedar, $1.95; hemlock, 98¢; balsam, 79¢.

1943: fir, $2.47; cedar, $2.28; hemlock, 94¢; balsam, 93¢.

1944: fir, $2.44; cedar, $2.82; hemlock, $1.25; balsam, $1.21.

THE COMMISSIONER: Just what do receipts mean? Is that actual payments?

MR. McPHERSON: Mr. Byers, I think, could advise your Lordship probably on that.

THE WITNESS: My lord, as far as I can understand, they take the log scale of all the timber sales which are operating in that particular year and then they figure up the stumpage price on those timber sales, and they get a different average from the timber sales which were sold,

and in which the bid is indicated. A timber sale that was probably bid for and bought this year might not be operated on until next year or the following year.

THE COMMISSIONER: I follow you. So that the bid prices are really the most significant in terms of what the market was in a particular year.

A Yes.

MR. McPHERSON: Q: In giving your evidence today you were talking about the price of standing timber skyrocketing and you suggested to his Lordship that it started to sky-rocket about 1938 and you gave your reasons. Can you tell me what the going price of standing timber in 1938 was in the E. & N. timber belt?

A Are you referring to the E. & N. timber or private timber?

Q You have stated you have no information about p private timber. Could you give me the E. & N. price? A: Only by hearsay. I have no way of proving it.

Q Well, from hearsay what is your information? This is in 1938. A: My information at that time was that timber was selling from $1.00 to $2.00 a thousand.

THE COMMISSIONER: Would we not be on safer ground if you wrote to the E. & N. Company and asked for this information?

MR. McPHERSON: We are going to produce evidence on it, but this witness has been giving evidence

as to his knowledge and I was trying to find out whether or not he knew what timber was selling for.f

THE COMMISSIONER: I think Mr. Byers quite frankly said he didn't know as far as the E. & N. were concerned, and I take it the figure you gave just now was a guess or the best recollection you have.

THE WITNESS: Approximately, my lord.

MR. McPHERSON: What I am trying to arrive at at the moment is the question of sky-rocketing of timber prices should be tied into some knowledge of the going price at the time.

THE COMMISSIONER: All right, you may go on.

MR. McPHERSON: Q: Instead of going back to 1938, let us take 1942 to 1944. Would you say the prices were sky-rocketing in 1942 to 1944?

A I would say, generally speaking, that stumpage prices were on the upgrade.

Q The figures just put in -- I show you the statement -- don't they indicate that the prices were not rising to any extent?

A Quite so, but unfortunately these figures are not a true picture of the story for the simple reason that whenever you get a number of bids, you may get one or two that they bid abnormally high on, and they may be sold at those high rates and consequently that throws your average rates out considerably; and the same thing applies if there is no competition and the bids are comparatively low

for a period of time it throws your average lower than the rate is.

THE COMMISSIONER: Q: But is that a complete answer, Mr. Byers? Is not this the situation: Assuming there was a great demnd for standing timber, would not one expect, regardless of the conditions you refer to, higher prices?

A Yes, that is what I mean, trying to influence, my lord, -e the prices were stiffening and going higher during 1943 and 1944, but these Government sales are not a true reflection of what the going stumpage prices were because of those conditions obtaining. There was no competition in a great many cases and in a great many cases the timber was of poor quality, that is on a small area. In some cases I know myself, it would never have been taken out except it was handy to the logging operation. On good timber sales the price undoubtedly had a tendency to go up.

MR. McPHERSON: Q: Would you agree with me that your criticism of these figures read into the record is also a fair criticism of this Exhibit 24?

A The same thing would apply.

Q In other words, do you agree that Exhibit 24 doesn't really represent the true value of the timber? A: It doesn't represent the true stumpage value, no.

Q It was both Government timber and E. & N.

timber? Would you go so far as to say that the Government and the El & N. Company were both giving away timber, figuratively speaking?

A No.

Q Would you agree with me that they were selling at a reasonable price?

A They were selling at a price which they considered fair on which, with no competition, they were compelled to sell.

Q Do you know Mr. Hunter of the Lake Logging Company?

A Very well.

Q Would you say that he knows the value of timber?

A I think hedoes.

Q Would you say that his company in buying timber would strike a fairly good bargain?

A I am quite sure he would drive a hard bargain.

Q Would you say that in selling the company timber he would get as much as he could out of the timber?

A: I would say so, yes.

Q With respect to yourstatement to my barned friend about the efficiency of the Deep Bay operation, I take it you were referring to the efficiency of the management and not necessarily the efficiency of the operation as a logging operation? Would that be correct?

A Well to the efficiency of the logging that was being carried on.

Q Would you say that the railway operation was

an efficient operation?

A Yes, as far as I could say it was efficient.

Q So when you speak of the efficiency of the operation, you are not talking of the efficiency of the men directing it and managing it, but about the efficiency of it from the logger's point of view?

A Yes.

Q If it was an efficient organization and an efficient operation, would you expect it to make profits? A: Yes.

Q And if it didn't make money, would you say that was some indication that it wasn't so efficient? A: Well there might be many factors enter into that. It could be possibly they wouldn't make money due to certain causes which were beyond their control.

Q Such as the increase in the cost of labor?

A Yes, and danger from fire and flood, and so forth, and such circumstances over which they had no control.

Q In this particular company I don't think there has been any evidence that they had any fire. If this company wasn't making money under the conditions which you have described as existing in 1941 and during the war, when you have stated things were booming, prices s sky-rocketing, would you say they were an efficient organization?

A Well, ordinarily I would say they should have been making money at that time.

Q You think they should be making money ?

A Yes.

Q Would you agree with me, from what you have seen of the Deep Bay operation, that when Mr. Kagetsu was operating, he would take out the best timber he had?

A Well I am not prepared to say whether or not he did. I do know he took out some good timber especially in the early years of his operation, but it was a shorter haul, but I still think the timber left in the area was capable of being taken out at a profit.

Q And as a practical man in the logging game, if there was no timber other than the Deep Bay timber which the company owned, would you say this operation had become a clean-up proposition?

A Not with the amount of timber left in the area.

Q You wouldn't say it was a clean-up operation?

A No, I would say it was still a going concern.

Q 27 million feet? A: That is a lot of timber.

Q Have you any idea how much they were cutting a year?

A No, I can't recall but I would say on the average they would be cutting -- making a guess -- around ten million a year.

Q Then if he was cutting ten million a year,

this operation at the most had three years to go. Isn't that pretty much of a clean-up proposition ?

A I know lots of people who would be glad to get a piece of timber for three years.

Q Could you tell me what the date of the Sloan Report was?

A I think 1943 or 1944. I should know. I was on it.

THE COMMISSIONER: I think 1944.

MR. McPHERSON: Q: Would you say before the Sloan Report was issued, it was not customary in big operations to cut small trees?

A No, I wouldn't say it wasn't customary. I would say it was customary even in big operations.

Q About cutting these 12-inch trees -- I think you got it down as low as ten inches?

A Yes.

Q How big are piles? What diameter are they?

THE COMMISSIONER: You are speaking of the butts?

MR. McPHERSON: Yes, I am speaking of the butts.

A Unfortunately we don't measure piles by butt. We measure them by top measurements up to five or six inches and beyond, up to eleven to fifteen inches--from five inches to fifteen inches top measurement.

Q Some of the logs would be in the category of piles, wouldn't they?

A There is no difference between a pile and any other log. It depends on the size. The

only reason they are cut as piles is for a special purpose.

Q With respect to these operations you have talked about, would I be correct if I suggested to you that a lot of these operators cutting small timber were cutting on the property with small mills in the woods?

A Some were and some were not.

Q Wouldn't a lot of the small timber go into ties?

A Yes, but there was a lot of timber too small for ties cut into two by fours.

Q Taking a big operation, if you have a stand of big timber and you have got some small timber, such as the case you gave today of 52,000 to an acre, with only a few thousand below 18 inches, -- I think you even suggested here that a lot of that timber was over 18 inches, -- if a big operator puts in heavy equipment and heavy donkey engines and tractors, and so on, is it economical from his standpoint to haul small logs as against big logs?

A Well it is more costly to log the small timber. On the other hand, if you get to big timber, it is just as costly to log that. It is the medium size timber that is ideal for logging. This small timber is taken out in three lengths, and consequently they can haul that small timber economically in three lengths where you couldn't boom it into logs.

Q Wasn't most of this small timber cutting from 1935 on -- wouldn't you agree with me most of that small timber would be cut by operators who had a stand of small timber?

A No. These big operators like Bloedel, Stewart & Welch and MacMillan -- the evidence is easily got from the Forestry Service office -- the later situation will show they had logs 9 and 10 inches in diameter.

Q What year was that?

A Ever since 1936. I would go further back than that.

Q Would you say that the H. R. MacMillan Timber Company and associates were cutting logs 8 or 10 inches at the butt in 1936?

A Yes, I think I would be correct in saying that, although my information is and my personal knowledge is that it was a little later than that when they actuall went into the business of cutting small timber on an extensive scale.

Q Wouldn't you agree with me that the big operators with heavy equipment didn't cut what we would call small timber, say 18 inches breast high, until the price of lumber and the price of logs, the ceiling was lifted, and it was only then that it became economical for the big operator to bring out little logs?

A Generally speaking, the big operator logs his land cleaner than the small operator, and he took as much of the small timber as it was economically possible for him to handle, and one

of the reason why he did that was because, as I said before, for the last 30 years the Forest Service has been continuously pounding at the logging operator to utilize all he could. This is not a thing of the past three or four years. It is a thing of the past 30 years and has been getting better every year.

Q When did the reforestation program start in this province? A: In 1920, they started to make these surveys of the timber and lay their plans for reforestation.

Q Isn't it true that the purpose of the Sloan inquiry was to find out how to make better utilization of the timber in this province?

A Quite so.

Q If all this knowledge was available before, why do you suggest they had the Sloan inquiry?

A Simply because public opinion demanded it.

Q But public opinion was already informed that the loggers had reforestation program; prior to that they were cleaning the land clean. You have suggested MacMillan was cleaning the land clean.

A I didn't suggest that at all. I said they started in about 1936 and 1937 to take out as much of the small timber as was economically sound for them to take out.

Q For the first time we have got the real point -- as was economically sound to take out.

A Yes.

Q When did it become economically sound for a big

operator with big equipment to take out trees down to 10 inches? A: It was just as economically sound in 1920 as in 1944.

Q Was it economically sound in 1920?

A Absolutely.

Q And was it economically sound in 1941?

A Absolutely.

Q And in 1942? A: Yes.

Q And in 1943? A: Yes.

Q I take it from your evidence that pretty nearly everybody in this province from 1938 on -- you go back to 1920 now, but let's take 1938 -- from 1938 on, are you suggesting that these loggers as a general policy were taking out trees down to 12 inches breast high?

A As a general practice, yes.

Q And started taking them out even smaller than that? A: Some of the smaller operators, with small mills.

Q Where were they selling all these little logs?

A In Vancouver.

Q Who was sawing them?

A Various mills.

Q How many Swedish gang saws were in Vancouver in 1920? A: None at that time.

Q How many in 1938? A: You don't require a Swedish gang saw to cut a small log.

Q In 1938, how many were there?

A I couldn't tell you offhand. There weren't many.

I wouldn't say there are a dozen in British Columbia today.

Q You stated this morning you made some inquiries and ascertained there were six Swedish gang saws out of 1600 mills.

A Yes.

Q Do you know the Hillcrest Lumber Company, established near Duncan?

A Yes.

Q Was that a tidewater mill?

A No.

Q Was that a mill in the woods and they were sawing their own logs?

A Yes, they were sawing E. & N. timber.

Q Would you agree with me that when the Hillcrest Lumber Company brought in that Swedish gang saw, it was considered quite an innnvation in this province? A: Yes.

Q What would you say is the percentage of loss for the saw kerf of an ordinary headsaw?

A Well, on the ordinary headsaw, with a standard 3/8th gauge, it is 27%.

Q That is, on an ordinary head saw?

A With a 3/8th gauge.

Q And what is the saw kerf with a Swedish gang saw of similar type?

A I think 3/16th, as near as I can remember.

Q 3/16th %? A: 3/16th inch gauge. Pardon me, were you asking the percentage of the saw kerf?

Q Yes. A: I can't tell you, because I haven't figured it up, but if it was a 3/16th it would be double 27½.

Q You mean there is more saw kerf from a Swedish gang saw? A: I mean less saw kerf from a Swedish gang saw. It would be half.

THE COMMISSIONER: Q: When you say 27%, what does that mean? A: 27% of the sound wood in the log.

MR. McPHERSON: Q: With respect to these pony mills you mentioned and said they could be used for a similar purpose, isn't it a fact that pony mills and other mills in the Vancouver area are generally used for cutting timbers after they have been cut out of logs and are not used to cut the logs? A: No, that is not true.

Q You agree they are used for the purpose of cutting timbers? A: No.

Q Do you agree that was the original purpose for pony saws? A: No.

Q You don't agree with that?

A No.

Q What would be the saw kerf in a pony mill?

A Well, some of them are bandsaws and some are circular saws. As a rule, the circular saw is 5/8th and the bandsaw is 3/16th.

Q What would that work out to?

A The same percentage.

Q As the Swedish? A: No.

The percentage of the 3/8th saw kerf is 27.27%.

Q That is a pony mill?

A No, that is a standard gauge. It may be a pony mill. It could be, if a circular saw, but if a bandsaw, they use as a rule 3/16th. Then the saw kerf would only be half of the circular saw.

Q So the saw kerf would be the same as from a Swedish gang saw? A: Yes.

Q Do you suggest they were cutting small logs in the pony mills? A: Absolutely.

Q Then why was the Swedish gang saw considered such an innovation?

A It has certain advantages. When I refer to the pony mills, they were erected and in operation before the Swedish gangs came in. The only difference between the Swedish gang saw and the pony is that the Swedish saws saw a truer board; in other words, it has a tendency to travel straighter than a band saw or a circular saw.

Q Can you explain from your knowledge of logging why it is that there are not more Swedish gang saws in this province, if it is profitable to cut these small logs?

A I suppose that one of the reasons for there not being more Swedish gang saws is because there hasn't been a great many mills erected in the past ten years in this province. There has been one or two; and the Hillcrest Company and the Lake Logging Company had a gang saw which

they sold, I believe this year. There hasn't been a great deal of new mill construction, except in Vancouver, small mills.

Q But you say that a gang saw isn't suitable for a big mill. A: No, it isn't. A Swedish gang will only cut from 35 to 40 thousand in an 8-hour shift. For instance, when you use a Swedish gang saw, the whole output of your log is slash grained.

Q So they have some disadvantages too?

A Yes, but they are really an improvement over the old method of sawing small logs.

Q You agree with me that you would only saw small logs, if there is a good market for lumber?

A It depends on conditions.

Q Good economic conditions?

A It depends. If you have a good local demand for lumber, you can saw small logs and make money.

Q With respect to the overruns indicated on these charts, Exhibits 22 and 23, what might be taken as overruns by some people, would you agree with me that some of that overrun would be accounted for by the cruiser not having taken into account trees below 18 inches?

A In relation to cruises, now?

Q Yes, the general picture of cruising timber. Perhaps I should ask you this first: Would you agree with me, generally speaking, the cruises made in this province by reputable timber cruisers are, as a general rule, considered conservative?

A Yes.

Q Do you agree with me as a general rule the industry, in buying standing timber in this province, pays on stumpage.

A Generally speaking, yes.

Q Do you agree with me that timber cruisers, in cruising timber, cruising 18 inch timber in 1944, they would put smaller timber in as No. 3 grade?

A No, because they don't do that.

Q What do they do? A: They cruise that, as a rule, from the other stand of timber. Most cruisers cruise up to 18 inches, d.v.h., and then they show the quantities below 18 inches, d.v.h.

Q And they don't just put that quantity in with their grade 3? A: No.

Q Would you say that is the way they were cruising timber in 1939, 1940 and 1941?

A Yes, that was done at that time.

Q With regard to the mills operating and cutting lumber in this province, would you say that the mills today are not getting as large an overrun from their cut as they were before 1943?

A No, I wouldn't say that. I think it would be similar today as five or twenty years ago.

Q And you don't think there is any difference between up to 1943 and the present time?

A No.

Q You left the Government in 1947?

A Yes.

Q I take it from your last statement that you would not agree with me that the scaling of logs is more favourable to the logger today than it was prior to 1943?

A No, I don't think so.

THE COMMISSIONER: Have you considerably more ground to cover?

MR. McPHERSON: No, I am just about finished, my lord.

Q I show you these Provincial records again and I show you a sale to the W. Brown Logging Company, Haney, in which there was competition, and the sale is No. 33815. It is mostly hemlock, 300,000, fir, 40,000 at $2.75, and there was a bid of $6.50. A: Yes.

Q Do you know Mr. Brown of the Brown Lumber Company?

A Yes.

Q Is that Mr. Fred Brown?

A No.

Q What Brown is that -- J. L. Brown?

A Yes, that is correct.

Q Would you say that Mr. Brown is a man who wouldn't like to be outbid?

A Knowing him, I don't think he would bid an unreasonable price. I think he would use discretion.

Q From the statement you just read, that is a small block of timber? A: Yes, a fairly small quantity of fir. He could very well bid $6.50 on the small quantity in order to get a large amount of the other timber there.

Q In these figures my learned friend gave of the price range, I notice he refers to 1943, $1.25 to $6.50. A: Yes.

Q You went all through these records in making your extract? A: Yes.

Q Do you recall having found any other than that one sale of $6.50 in that year?

A Offhand, I don't remember, but I think there was one in there with the price of $8.00.

Q Fir? A:I don't recall whether fir or not.

Q That couldn't have been in that year, because the Government figures say it was $1.25 to $6.50.

A No, it wouldn't be in that year.

THE COMMISSIONER: For your information, the Sloan report was published December, 1945. Any re-examination?

MR. BREWIN: I have one or two questions.

THE COMMISSIONER: Would you prefer to leave it until the morning?

MR. BALDWIN: Mr. Byers is going to be here in any event.

THE COMMISSIONER: If Mr. Byers is going to be here in any event, you can leave it until the morning.

MR. BALDWIN: There is only one point. My learned friend, early in the cross-examination this afternoon, introduced some figures which Mr.Wray prepared for him, I think, as to the average yield per thousand, the average number of thousand feet per acre, and said it worked out to

8,000 feet per acre.

THE COMMISSIONER: The statement was made, but I do not recall any document having been put in to establish the fact.

MR. McPHERSON: I took it from the exhibit. I took the figures from the document, and I understand from Mr. Wray they are correct. I added up all the blocks and took the average. I understand that my learned friend has done it on a different basis, but I was dealing with the average.

MR. BALDWIN: Ours are considerably higher, the way we do it. 198 shows 20,000; 234, 21,000; 256, 19.6 thousand; 276, 20.1 thousand; 263, 15.6 thousand; 267, 19.3 thousand.

MR. McPHERSON: If my learned friend wants to put in evidence on those other blocks, that is agreeable to me, but I am only talking about three blocks of timber, where most of the Deep Bay timber is, 617, 566 and 504, and I averaged that timber. Now, he is talking about the other blocks of timber. I am talking about the timber there at the time the Custodian took over.

MR. BALDWIN: I misunderstood my learned friend.

THE COMMISSIONER: Very well. We will adjourn until ten o'clock in the morning.

(PROCEEDINGS ADJOURNED UNTIL NOVEMBER 19,1948, AT 10:00 A.M.)

I hereby certify the foregoing to be a true and accurate report of the said proceedings.

Deputy Official Stenographer

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